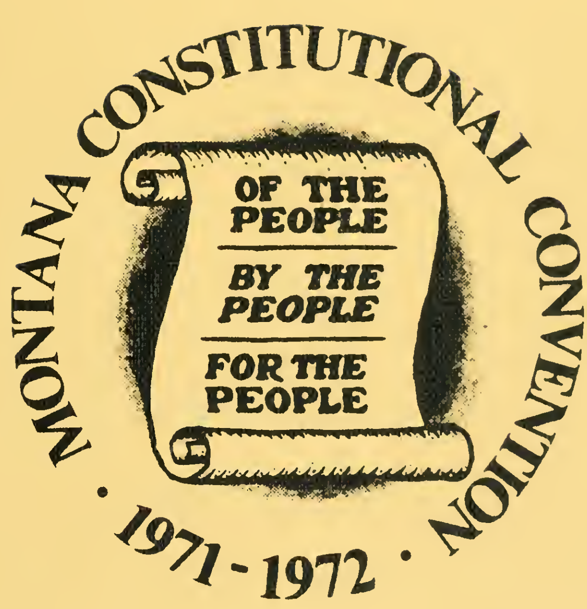
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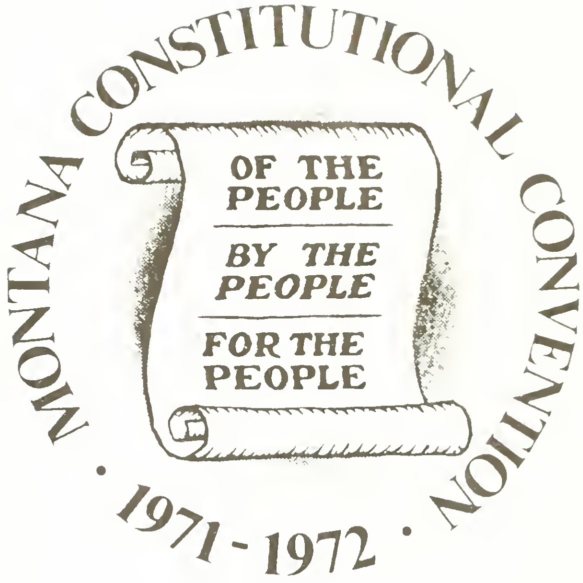
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| | |
|---|---|
| Noble | Aye |
| Nutting | Aye |
| Payne | Absent |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Aye |
| Skari | Absent |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Absent |
| Vermillion | Absent |
| Wagner | Absent |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 24 have voted Aye, 54 have voted No.

**CHAIRMAN GRAYBILL:** 54 having voted No and 24 Aye, the motion fails. Is there other discussion of Section 28? Members of the committee, you have before you for your consideration Section 28 and you've had the recommendation of Mr. James that when this committee does rise and report, after having had it under consideration, that we recommend it be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Section 28 is adopted. Will the clerk read Section 29.

**CLERK SMITH:** "Section 29, Eminent domain. Private property shall not be taken or damaged for public use without compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner is the prevailing party." Section 29, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman, thanks for reminding me I brought up Section 28. It seems like a long time ago. (Laughter)

**CHAIRMAN GRAYBILL:** How about Section 29, Mr. James? (Laughter)

**DELEGATE JAMES:** Thank you, Mr. Chairman. Mr. Chairman, I move that when this committee does rise and report, after having under consideration Section 29 of Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman, the committee unanimously approved substantive changes in the eminent domain section. The thrust of the committee effort was to assure the full and just compensation—that full and just compensation be made in all eminent domain actions. Without it, some of the costs of eminent domain action fall where they do not belong—on the person whose property is being condemned. In order to give substance to the citizen's effort to challenge the compensation figure of the condemnor, the last sentence of this provision was added. Those testifying in opposition to the committee's original eminent domain proposal agreed that this sentence, which awards necessary expenses of litigation to the private property owner when he is the prevailing party, is just. The committee intends, by "necessary expenses of litigation", all costs including appraiser's fee, attorney fees and court costs. It is felt that when—this stipulation will produce a climate in which the condemnor's offer for compensation will be more—will more adequately reflect the compensation to which the property owner is entitled. The property owner will have a chance to collect the expenses he incurs in challenging the condemnor's action. In addition, it will redress the imbalance between the vast resources brought to bear by the state and those available to the individual property owner in contested cases. The committee recommends this section to the Convention as insurance that the compensation to the private property owner will, in fact, be just. Delegate Proposal Number 75 was amended to accomplish this provision. I think you're all familiar with the term "the public good". Sometimes this is rather elusive and is used to condemn property and a figure which may be unjust to the property owner is not contested because of the cost of litigation. This, I believe, will correct this situation. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there discussion of Section 29?

Mr. Davis.

**DELEGATE DAVIS:** Mr. Chairman, I move to amend Section 29, on page 11, line 29, by placing a period after the word "loss" and deleting therefrom the words "having been first made to or paid into court for the owner".

**CHAIRMAN GRAYBILL:** Now, you just want to delete the rest of that sentence, is that right?

**DELEGATE DAVIS:** Yes, sir.

**CHAIRMAN GRAYBILL:** Mr. Davis proposes an amendment to Section 27 which puts a period after the word "loss" and strikes the words "having been first made to or paid into court for the owner".

Mr. Davis.

**DELEGATE DAVIS:** Mr. Chairman. Although I confess I've not had the extensive experience in this matter that Chairman Dahood has, in the road problems we've had in our area with the state, the full extent of the loss has not been fully determined until after the road has been constructed. Many people have settled on what they thought were the full extent of the loss, then to find out that the underpasses wouldn't work or that right-of-ways weren't there, and so forth. I think that the expansion they made to have the additional cost paid are very fine, but I don't think we want to hold up the whole interstate road program until all the litigation is over, and I don't think that you can make a determination of what the full extent of the loss is until after the construction takes place. We've had many representations made of many landowners in our area who have settled based on the right-of-way agreements, only to find out subsequently that their frontage roads weren't there or that their other underpasses, in some cases, were not adequate to get stock through or machinery from one side of the road or the other, and then they were precluded from getting the full amount of their loss. So I think that this amendment will be in keeping, I hope, with what they have in mind. I don't think that you can stop the program on road construction by having all the litigation settled, and I don't think—this again is a two-edged sword. It can work to the detriment of the landowner as well as to the—to his benefit; and I think it would be much better this way, in keeping with an orderly construction program, and also better for the owner, so they can determine what's actually happened after the construction has taken place; and I'll yield to Mr. Dahood to present his views on this.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I think Delegate Davis is really addressing himself to the delegate proposal before we changed it. The comments that he has made, at the moment, in my judgment, do not apply to the section as it presently reads. The language that Delegate Davis seeks to omit by his motion is language that we have had in the State of Montana for 80 years. The present constitutional provision, Article III, Section 14, reads: "Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner." The reasons that Delegate Davis has given for deleting this particular language relates to an entirely different problem. And, of course, the function of the court is to find out what is the full extent of the loss. When condemnation is made by the State of Montana, they are required by law to make deposit with the court with respect to the amount that is claimed by the property owner. That property owner is permitted, because it's necessary for him in order to protect his property position, to ask the court for permission to withdraw that sum of money. He is then permitted to present his case to a jury, to have that jury determine what is the full extent of the loss. That is the real conflict and the real controversy in an eminent domain proceeding. With respect to whether or not a frontage road is adequate, whether or not the underpass may be sufficient, that is a separate question that is not related necessarily to the amount of compensation. You have the plans of the Highway Department; they're produced in court. Their engineers testify, and the full extent of the loss is based upon what has been presented in that respect. If it turns out that the plans are later changed or that the construction does not fit that particular plan, you have then perhaps a different type of taking; and then, under this particular constitutional section, you have what we call inverse condemnation, where then the property owner can file a complaint in court and sue the state for an additional taking not within the contemplation of the first award. I took this time to explain for the benefit of the nonlawyer delegates what is involved, and I would ask Mr. Davis, Delegate Davis, if he would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** I yield, Delegate Dahood.

**DELEGATE DAHOOD:** Now, Carl, perhaps I have not responded directly to your position; and in order to clarify it so that everyone will understand what the situation is, if you have another question, I would welcome it at this time.

**DELEGATE DAVIS:** I do have another question, and perhaps more, if you would yield.

**DELEGATE DAHOOD:** I do yield, Mr. Chairman.

**DELEGATE DAVIS:** Your principal change, as I understand—in the first sentence of this section from our present Constitution, which says "just compensation"—your principal change is to have "compensation to the full extent of the loss". Would you explain the difference in adopting that language.

**DELEGATE DAHOOD:** Carl, in my judgment, I don't think it makes any real substantial difference. As you well know, there are many, many, many eminent domain cases decided by the Supreme Court of the State of Montana dealing with the question of what is the full extent of the loss. I do not think it is going to change the law that expands with time and circumstance. I think we have merely indicated here that we want to be sure that the court continues to recognize that we want the citizen compensated to the full extent of the loss. As you well know, the leading authority on this particular subject of the law is Nichols; that contains some eight volumes, and most of that work is related to the question of what is the full extent of the loss.

**DELEGATE DAVIS:** Thank you. Will you yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Davis. Will you yield, Mr. Dahood?

**DELEGATE DAHOOD:** I do, Mr. Chairman.

**DELEGATE DAVIS:** For the purpose of the record in this matter, Mr. Dahood, is it your thought that the highway construction can then proceed as they now are by either you consenting or getting their take and go ahead with the construction before all litigation is—has been concluded regarding this particular take, to determine the full extent of the loss?

**DELEGATE DAHOOD:** Carl, without any doubt; we have not changed the present system whatsoever insofar as the ability of the State Highway Department to start construction.

**DELEGATE DAVIS:** All right, with that in the record, I'll withdraw my motion.

**DELEGATE DAHOOD:** Thank you very much.

**CHAIRMAN GRAYBILL:** Mr. Davis' amendment is withdrawn. Is there other discussion?

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President [Chairman], would Mr. Dahood yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Dahood?

**DELEGATE DAHOOD:** Yes, I yield, Mr. Chairman.

**DELEGATE HABEDANK:** Mr. Dahood, for the purpose of the journal in future litigation over interpretation of this term, will you please state into the record what is meant by the words "prevailing party".

**DELEGATE DAHOOD:** By "prevailing party" I mean, for the record, the property owner, in the event that he is the prevailing party. The only person intended by this particular section and the sentence that has been added—"just compensation shall be awarded by the court only"—"just compensation shall include expenses of litigation only when the prevailing party is the private property".

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Dahood, I failed to ask the question properly. If the Highway Department offered an owner $5,000 for his property and the owner refused it and went into court and secured a judgment from the jury for less than $5,000, would he then be a prevailing party?

**DELEGATE DAHOOD:** He would not be a prevailing party.

**DELEGATE HABEDANK:** If he obtained $5,001, would he be a prevailing—

**DELEGATE DAHOOD:** He would be a prevailing party.

**DELEGATE HABEDANK:** Thank you, Mr. Dahood.

**CHAIRMAN GRAYBILL:** Is there other discussion of Section 29?
Mr. Harlow.

**DELEGATE HARLOW:** I merely wish to rise in support of this section. I want to ask Mr. Dahood the one question in between what Mr. Habedank—take the same case that Mr. Habedank had, and the party received only the $5,000. Would he be prevailing?

**DELEGATE DAHOOD:** He is not the prevailing party in that instance.

**DELEGATE HARLOW:** He's got to get $1 more?

**DELEGATE DAHOOD:** He has to exceed the offer made by the State of Montana.

**DELEGATE HARLOW:** Thank you. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the issue is on the motion of Mr. James that when this body does arise and report, after having had under consideration Section 29, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 30, Mr. Clerk.

**CLERK SMITH:** "Section 30, Treason and descent of estates. Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or his confession in open court; no person shall be attainted of treason or felony by the Legislative Assembly; no conviction shall cause the loss of property to relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death." Section 30, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President [Chairman]. I move that when this committee does arise and report, after having had under consideration Section 30 of Proposal Number 8, that it recommend the same be adopted.
Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President [Chairman]. This section reads the same as the Section 9 in the 1889 Constitution, except for the last—right—starting on line 17 on page 10; and we did change the language there. We took out that business of the corruption of the blood. We thought that sounded a bit obscene and so we changed it to "no conviction shall cause the loss of property to the relatives or heirs of the convicted." We thought it stated it in better English. And then we changed the last sentence to read: "The estates of suicides shall descend or vest as in cases of natural death", rather than the old, archaic language of the 1889 Constitution. And we thought about changing the language further, but some of the members wanted to leave the language as much as possible as is.

**CHAIRMAN GRAYBILL:** Is there discussion?
Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, will Mr. Blaylock yield to a question?

**DELEGATE BLAYLOCK:** Yes.

**CHAIRMAN GRAYBILL:** Mr. Blaylock?

**DELEGATE BLAYLOCK:** I yield.

**DELEGATE HARPER:** How do I go about committing treason to the State of Montana?

**DELEGATE BLAYLOCK:** Well, to think up a good example, Mr. Harper, I suppose one case of treason against the State of Montana would be if there were a conspiracy to be formed and they were to, say, storm this building and to try to take the seat of government of the State of Montana. That would be one case of treason against the state. I don't know whether you like it or not.

**DELEGATE HARPER:** Well, no, that's fine. I'm just glad—I'm just grasping for straws here because several people here in town have asked me, "Well, what [why] in the world are you going to have something about treason of the State of Montana? Is somebody going to wage war on Montana?" We're talking about aiding its enemies. They fought a war in the 1860's that decided that Montana can't—decided to be a sovereign state and leave the Union. And they pretty well settled that, and I wasn't really able—and I'm—if you could give me even one other illustration, I'd appreciate it; but storming the Capitol will probably do in Helena. (Laughter)

**CHAIRMAN GRAYBILL:** Are there any other questions or discussion on Section 30? Members of the committee, you have before you, on the recommendation of Mr. Blaylock that when this committee does arise and report, after having had under consideration Section 30, that we recommend the same be adopted. All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 31, Mr. Clerk.

**CLERK SMITH:** "Section 31, Ex post facto, obligation of contracts and irrevocable privileges. No ex post facto law nor law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises, or immunities shall be passed by the Legislative Assembly." Section 31, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 31 of Proposal Number 8, it recommends that the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. President, I'd like to read the brief comments on this. "The committee voted unanimously to retain the former Article III of Section 2 unchanged. The protections against ex post facto laws, laws impairing the obligation of contracts and laws granting irrevocable privileges seemed adequate. No delegate proposals were received on this provision." With this ex post facto in here, I believe the cowboys of the Powder River country and the loggers of the Kootenai and, I hope, the 24 licensed attorneys will accept this.

**CHAIRMAN GRAYBILL:** Well, there's one that would like to discuss it.
Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, just for the benefit of some of the peons in this assembly, would somebody—perhaps the Chairman of the committee or maybe the Chair—explain the meaning of the word "ex post facto law"?

**CHAIRMAN GRAYBILL:** Well, it has nothing to do with what those Powder River cowboys think it means. (Laughter) Ex post facto means making a law that relates back to a period before the law was passed. In other words, if they passed a law in the next Legislature making it a crime to participate in a constitutional convention, that would be an ex post facto law. Is that right, Mr. Johnson?

**DELEGATE JOHNSON:** Mr. Chairman, I believe those cowboys down there in Powder River country are thoroughly confused. (Laughter)

**CHAIRMAN GRAYBILL:** Is there other discussion of Section 31? It means you can't make a law that goes backwards, or behind the time the law was made. All right, members of the committee, you've had before you the recommendation of Mr. James that when this body does arise and report, after having had under consideration Section 31, that we recommend it be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed? (No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 32.

**CLERK SMITH:** "Section 32, Civilian control of the military. The military shall always be in strict subordination to the civil power. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law." Section 32, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE R.S. HANSON:** Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 32 of Proposal Number 8, it recommends that the same be adopted.

The committee voted unanimously to retain this former Article III, Section 22, as unchanged. In doing so, the committee notes the importance of the declaration of principle that the civilian authority always supersedes that of the military. Although the quartering of troops prohibition has not been an issue in many years, the committee felt it was wise to retain the safeguard. No delegate proposals were received on this provision.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 32?

Mr. Bugbee.

**DELEGATE BUGBEE:** I'd just like to ask why the committee felt it was wise to retain that safeguard of quartering and—it doesn't make any sense to me.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE R.S. HANSON:** Well, I think the committee felt they didn't want to take any of the rights away from the people and say that we had deleted something from the Bill of Rights. Now, I don't know why they probably put it in the one in 1889; but as long as it was there, they just continued to keep it in this present Constitution.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Maybe Mr. Dahood would answer that.

**CHAIRMAN GRAYBILL:** Mr. Dahood, the question is, why do you keep, "No soldier shall in time of peace be quartered in any house"?

**DELEGATE DAHOOD:** Well, simply because this is a right the people have at the present time. We do have such thing as a National Guard. We can have a militia. We've had situations involving a riot at the state penitentiary, where some well-meaning individual with military power and control may want to do something. We merely want to indicate that as far as the people of Montana are concerned, they want that particular protection and they're going to insist upon it and continue to do so.

**CHAIRMAN GRAYBILL:** Mr. Rollins.

**DELEGATE ROLLINS:** Mr. Chairman, I'd like to ask—

**CHAIRMAN GRAYBILL:** (Gaveling for quiet) Mr. Rollins has the floor.

**DELEGATE ROLLINS:** I'd like to ask Mr. Dahood a question, please.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** I yield.

**DELEGATE ROLLINS:** Mr. Dahood, under what circumstances could martial law be proclaimed in the State of Montana?

**DELEGATE DAHOOD:** Under what circumstances?—I would suppose under some type of state or national emergency.

**DELEGATE ROLLINS:** And if that occurred, would the civilian be superior to the military?

**DELEGATE DAHOOD:** Would the civilian be superior to the military? I would hope with respect to this particular right, yes, about the quartering of soldiers.

**DELEGATE ROLLINS:** How about the first part of the statement? It said that the military would always be in strict subordination to the civil power. Would this prevent the declaration of martial law?

**DELEGATE DAHOOD:** No, it would not.

**DELEGATE ROLLINS:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Rollins, the Governor would always be in charge theoretically.

Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman, I'd like to amend that we put a period in after "power" and delete the rest of that.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee, you write that amendment up now and send it up to me.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee has proposed an amendment to Section 32 which would place a period after the word "power", so that the section would read: "The military shall always be in strict subordination to the civil power." She would then strike the words: "No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law."

Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman, if it has had no use in the past Constitution, I don't understand why it needs to be kept and that's why I think it should be deleted. If no one can defend it, I don't see why we should keep it.

**CHAIRMAN GRAYBILL:** Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman, in the big blue and white book, *Bill of Rights*, page 91, you'll find an explanation of why this is kept. It goes back to the American Revolution, and it was one of the principles that was very important at that time. I'd like to quote some of this material. "Nearly every state Constitution has a provision prohibiting the quartering of troops in private dwellings. The principle was expressed as a complaint in the English petition of right of 1628"—and they quote that. I'd also like to read further. It says: "The principle of no quartering of troops is now well established and seems to be of little relevance today; however, the enunciation of such a principle is a sign of the pervasive colonial mistrust of the military and the colonists' desire to prevent the potential abuses with which they knew standing armies threatened society. In 1765, General Gage secured the passage of a quartering act to aid him in the enforcement of the Stamp Act and the Revenue Act of 1764." Well, maybe it won't happen again, but there's your history.

**CHAIRMAN GRAYBILL:** Is there further discussion?
Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, on behalf of the Bill of Rights Committee, I oppose the amendment. As a practical point, I don't expect that this is ever going to happen, but it's a protection that the people have. They have had it traditionally and they have had it historically. It could serve some purpose. There could be some violation of that right under some unique emergent circumstance that can happen; probably will not. But the people are entitled to have that. We took the position on our Bill of Rights Committee that we were not going to take away any of the rights of the people unless there was some overriding reason as to why there ought to be some change, some modification, or why the particular provision should be taken away. The people sent us here to protect their rights and to expand upon them where a reason required it, and we submit that striking that last portion of Section 32 serves no useful purpose and there is a useful purpose to be served by retaining it. I oppose the amendment.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** I guess I could talk to Daphne without getting to the microphone, but I've just been reading the story of the San Francisco earthquake recently, and there were some strange things that happened in the midst of that; and I would remind her we're sitting on an earthquake fault right here in Helena, and there may be reason to keep such a provision in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, if the National Guard on maneuvers in the vicinity of Missoula are quartered in Daphne's house without her consent, perhaps the meaning of that would be more clear. (Laughter)

**CHAIRMAN GRAYBILL:** I think, Mr. McNeil, the point is that it can't be without her consent. (Laughter) Perhaps the Chair should stay out of the argument. Is there other discussion? (Laughter)
Mr. Harper.

**DELEGATE HARPER:** I'd just like to comment, Mr. Chairman, that they'd better not try to quarter anybody in Rachel Mansfield's grandmother's house. (Laughter)

**CHAIRMAN GRAYBILL:** Very well, members of the committee, you have before you Mrs. Bugbee's amendment. So many as shall be in favor of her amendment to put a period after "power" and strike the quartering act, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No. (Laughter)

**CHAIRMAN GRAYBILL:** The motion is defeated. Are there other discussion of Section 32? Members of the committee, you have before you, on the recommendation of Mr. Hanson that when this committee does arise and report, after having had under consideration Section 32, that we recommend it be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Section 33, Mr. Clerk.

**CLERK SMITH:** "Section 33, Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of peace or the suppression of domestic violence, except upon application of the Legislative Assembly or of the Governor when the Legislative Assembly cannot be convened." Section 33, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman. I move that when this committee does arise and report, having had under consideration Section 33 of the Bill of Rights Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman. Article III, Section 31, remains unchanged. The protection, initially established to prevent the importation of strikebreakers, is thought to be an adequate safeguard against any body of armed men coming into the state. No delegate proposals were received on this provision. This particular section was reviewed in somewhat similar light as to the one previous to it. The thinking of the committee on this question was the same. It does have some history to it, and there is a possibility that in the case of an unruly situation that someone might be inclined to bring armed men into the state. And we felt that it was a good safeguard, and the committee felt it was important that this be retained as a safeguard to the people of the State of Montana. Thank you, Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Is there discussion? Members of the committee, you have before you, on Mr. Foster's recommendation, that Section 33 be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered. Section 34.

**CLERK SMITH:** "Section 34, Unenumerated rights. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people." Section 34, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 34 of Proposal Number 8, that it recommend the same be adopted.

Mr. Chairman, this provision is the same as the one we had in our last—in our present Bill of Rights, Section 30, and it's also contained in the federal Bill of Rights. I think that it is completely self-explanatory. There are rights which are not enumerated which the people of Montana should not be denied. Thank you.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 34? Members of the committee, you have before you, on the recommendation of Mrs. Eck that when this committee does arise and report, after having had under consideration Section 34, that we recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's adopted. Members of the committee, we have one new matter.

Mr. Campbell, do you want to make your proposal now? Do you want to make this other one or not? Do you want to leave it—drop it?

**DELEGATE CAMPBELL:** (Inaudible)

**CHAIRMAN GRAYBILL:** Well, you have on my desk an alternative proposal for the ballot on Section 12. I don't know whether you want it or not.

**DELEGATE CAMPBELL:** I would see if someone would—was going to move for reconsideration on that matter. If they did move for reconsideration, I would enter that later.

**CHAIRMAN GRAYBILL:** Very well, we have for reconsideration one matter, and I understand—Mr. Studer, my point is, if you want to make a motion to reconsider, do so; but I don't think I can hold the article; so you prepare yourself one way or the other. Mrs. Warden, do you want to take your matter first?

Mrs. Warden.

**DELEGATE WARDEN:** Yes, Mr. President [Chairman]. Having voted on the prevailing side, I move to reconsider Section 12 of the Bill of

Rights Article. I voted on the prevailing side and I've had second thoughts on this. This is the right to bear arms. I feel that I would like to suggest that instead of going through all the debate that we went through yesterday, that perhaps even a vote on this to put in those nine little words that were taken out yesterday would be in order. I think that we know pretty much what the problem is. We've talked about it; we've hashed it over for several hours yesterday. And I felt that I needed to bring it up today, and I would hope that we could have a vote without a great deal of debate. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Rollins.

**DELEGATE ROLLINS:** I've been expecting this, Mr. Chairman, and I don't know whether to call it "here we go again", or "it seems to me I've heard that song before". (Laughter) It is another attempt to substitute a later action for an action that has already been taken by this Convention. I doubt that much new can be adduced by redebating this. I don't know why certain people would have changed their minds unless they got word back from the folks back home or had a sudden reconversion during the night. I wonder if we discuss this all again—I've been thinking of titles again—will we, by reconsidering it, be doing as Longfellow states, doing something real in earnest, or will we be, as Shakespeare suggests, be enacting a tale told by an idiot, full of sound and fury, signifying nothing. I oppose the reconsideration of this motion.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman and fellow delegates. I had a—I get real emotional on this matter of guns, and yesterday I had prepared a 2-hour speech in support of a motion to delete the entire section, let alone amend it. But I forbore myself yesterday looking at my little sign that says, "Blessed is the man who, having nothing to say, abstains from giving in words evidence of that fact"—said sign having been distributed to us earlier. But I do believe I would be unable to resist the temptation today, if this matter were opened up, as I was successfully able in resisting the temptation yesterday. (Laughter)

**CHAIRMAN GRAYBILL:** Very well, apparently the issue arises on Mrs. Warden's motion that we reconsider Section 12.

Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President [Chairman], fellow delegates. I believe that we should reopen this for not too much debate, but for the simple reason that there are fifteen to twenty thousand people in the State of Montana that are a little bit emotional about this not being in our Constitution, not being added. And those nine little words certainly won't add much to the document as far as paper is concerned, but it can mean a lot in having a lot of other people concerned and voting for this completed document. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mrs.—

Mr. Choate, do you want to debate or do you want to discuss? Go ahead.

**DELEGATE CHOATE:** Only to say that I would support the motion to reconsider. I've had about a hundred and fifty letters regarding this issue, and I would support the motion.

**CHAIRMAN GRAYBILL:** All right now, that seems repititious. The Chair wants to get this going. All those in favor of Mrs. Warden's motion to reconsider—

Mrs. Warden, do you want to close?

**DELEGATE WARDEN:** I want a roll call.

**CHAIRMAN GRAYBILL:** You want a roll call vote. All those in favor of Mrs. Warden's motion to reconsider Section 12, please indicate by voting Aye; those opposed, vote No. It takes two-thirds or 51. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Now, I think the Chair stated that wrong. This is not to suspend the rules, this is to reconsider; so it does not take two-thirds or 51 percent, it takes a majority. Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, close the vote, take the tally.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |

| | |
|---|---|
| Barnard | Nay |
| Bates | Excused |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Absent |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 47 have voted Aye, 45 have voted No.

**CHAIRMAN GRAYBILL:** 47 having voted Aye, 45 having voted No, Section 12 is reconsidered. Will the clerk please read Section 12.

**CLERK SMITH:** "Section 12, Right to bear arms. The right of any person to keep or bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." Section 12, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Warden.

**DELEGATE WARDEN:** Mr. President [Chairman], may I put in the same amendment that we had yesterday—"nor shall any person's firearms be registered or licensed"? I think it's all in the book. Do you need an extra amendment on it?

**CHAIRMAN GRAYBILL:** Would you read it to me.

**DELEGATE WARDEN:** "—nor shall any person's firearms be registered or licensed."

**CHAIRMAN GRAYBILL:** You want to insert that after—at the end?

**DELEGATE WARDEN:** May I ask, Mr. Chairman—

**CHAIRMAN GRAYBILL:** Or do you want to put it under—after the word "property"? Is that right? Or where do you put it? No, you put it—"shall not be called in question".

**DELEGATE WARDEN:** —"in question".

**CHAIRMAN GRAYBILL:** All right, on line 20 on page 6, in Section 12, Mrs. Warden moves to add the words "nor shall any person's firearms be registered or licensed".
Mrs. Warden.

**DELEGATE WARDEN:** I would just like to say again I would hope that there could be a simple vote on this without a great long bit of debate.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, I move to delete Section 12, the entire section of the Bill of Rights Committee proposal.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a minute. That's a substitute motion?

**DELEGATE KELLEHER:** As a substitute motion, yes, sir.

**CHAIRMAN GRAYBILL:** Mr. Kelleher has now made a motion to delete Section 12 in its entirety.
Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, fellow delegates. When I was at the—on active duty last summer at the War College in Pennsylvania, a mother calmly walked into a bedroom in Harrisburg, Pennsylvania, and shot—pumped five slugs into her 16-year-old son as he lay in bed. Last week in Massachusetts a mother calmly shot three of her children and shot herself. Last summer in Billings, Montana, to get a little closer to home, a 20-year-old son had a dispute with his father, got the family .45 and did in the old man. Seventy-five percent of the homicides in the United States are with guns—that are with guns are committed in a fit of temper and a fit of passion. The only problem is they may cool off later, but the person who has been shot has been cooled off permanently. Seventy-five percent of these homicides with guns are between relatives or friends, people who know each other. I will not allow loaded weapons in my house, as has been said by some of the members here yesterday. I have stayed active in the Army Reserve for 23 years because I feel this is my duty in the field of national defense. And I submit that anybody here, or anybody in this state who is very anxious to protect the State of Montana and its land and its people, they can either join the National Guard—the Army National Guard or the Air National Guard. I'd be very happy personally to swear them into the Army Reserve here in Montana. They are also eligible, you know, to join the Navy Reserve or the Air Force Reserve. If you are really interested in defending your state, I urge you, and anybody outside who has been writing you these mimeographed, hectographed letters, that they do likewise. In fact, under our new Constitution, I'm very happy to say that females will be able to live in our barracks in the future, and I think that's wonderful. They, too, can bear arms as long as they wear a uniform. I think that's great. I'm all for it. That beats beer in a barracks any day. I just wish I was born 20 years later, that's all. This matter of registration of guns, as far as I'm concerned—I don't care what anybody feels or says about it—I would like to see us register guns. I would like to see very strict controls on handguns. If you want to belong to a gun association, let the Legislature provide for some kind of control of these weapons; you go out to the firing range and you can shoot at paper targets. I just don't like people shooting their kids, that's all—nor the old man, especially since I've got six kids. Might get mad at me, decide to do in the old man. The only problem with a gun, it's kind of final. Another thing about a gun is, it's very impersonal. If you go after me with a knife, at least I got a chance; you know, I can kick you someplace. Or if you try to poison me, I've got some kind of a chance; maybe I'll smell the poison in my drink or something. But with a gun, you just get away 10 or

15 or 20 feet and you calmly pull the trigger, and a little piece of lead comes out and hits me in my brain or my leaden heart or some other lethal place and does me in. This is what's so vicious about guns. So many guns have been imported into the city of Detroit that it is now known as the murder capital of the United States; and the least little spark, the smallest spark, could set off a rampage between the blacks and the whites in Detroit. Not everybody in Germany, in West Germany, carries a gun, or in England or in Norway or Sweden. Why do we have this big hangup that we've got to have a gun? I submit it's some kind of Freudian insufficiency of some sort. I have the utmost confidence in the sheriffs, in the deputy sheriffs, the highway patrolmen, and in the police of the city of Billings. As far as I'm concerned—in the County of Yellowstone. As far as I'm concerned, we have the best damned police force in the United States right down in Billings, Montana. We have a superb sheriff's department. When my children were little they very often got lost, and the police and the sheriff—

**CHAIRMAN GRAYBILL:** Mr. Kelleher, let's try and stay on the subject. We have a lot of other items to debate yet this afternoon.

**DELEGATE KELLEHER:** —they were always successful in finding my children, and I have the utmost confidence in them. And I'm not really going to carry out my threat, Mr. President, you know that. I have the utmost confidence in them, and I don't feel I've got to be carrying around—walking around with a .38 or a .45 hanging from my hip. It's not necessary. Therefore, Mr. Chairman and my fellow delegates, I urge you to strike Section 12, stop making America an armed camp where we settle every dispute like they did in the days of old, in the mining camps at Alder Gulch, with a .44. We have courts in Montana—and state courts and federal courts—and they are there with the help of us grateful and wonderful lawyers to settle any disputes that you have. You don't need to settle your disputes with a gun. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. President [Chairman], fellow delegates, I rise for the first time in support of my delegate friend, Bob Kelleher. You may think that's a little bit surprising, because I come from probably as strong a gun country as there is in the State of Montana. Before we got to this question, a few of the delegates were discussing it; and we felt at that time maybe a motion to delete this whole section might be the appropriate way to view this, because maybe then the people of this state would come to their senses about what we're doing in this particular section. Now, if this body at this particular time would pass this motion, we would not have prevented the right of the citizens of this state to keep and bear arms. The federal Constitution would still allow them to keep and bear arms, so we wouldn't have done anything completely out of the ordinary or completely wild. And we could let this thing sit for awhile, and we could see what the people of Montana think then. And if there is such a big rush for us to not only write the strongest gun control law in the whole United States, but in addition to that, legislate into that provision for the Constitution the provision that this state shall never register or license guns under any conditions in the future, then maybe we could reconsider it if it was all that important, and we could come back to a reasonable position which we found that the committee on the Bill of Rights took in the first place. Now, maybe that's begging the point, but I don't think it really is because these "right-to-bear-armers", I'll call them for eloquence or something, are really not satisfied with the strongest provision in the Constitution of any state in the Union. We gave them that, and maybe we gave it to them too easily. And I submit that if we delete this section, sit overnight, let them know where this Convention stands in our own minds, then maybe they'll be happy with the strongest protection of any state in the Union. This is an important issue, this guns. We talked about capital punishment. We were all extremely concerned about one man being killed by the state, and very well intended that we should be, but now we're putting a provision in the Constitution that ties the hands of the state in the future to in any way control guns under any circumstances. And I support the position of Delegate Kelleher that at this time that this Convention delete the section.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President [Chairman], I rise to oppose the motion to delete this section and I also oppose Mrs. Warden's motion to change the section as it was submitted by the Bill of Rights Committee's majority report. When I was campaigning for the Constitutional Convention, I made a real effort on this section because I knew a lot of the fellows around Laurel, my hometown where I have lived for the past 14 years, were very concerned about this business of right to keep and bear arms. I went to a number of them and I asked them about this specific section and I showed them how it was in our 1889 Constitution and I said, "Would you fellows be satisfied if we left that as it is?" And they said, "Well, that certainly looks good to us, and we'll go with it. This is what we want. We've been happy with this. Let's leave it alone." And as I pointed out yesterday, and I'm not going to repeat all the things I said then, but we had a great deal of—a great many indications from these different groups who are very, very concerned about this, and sincerely so. I don't question their sincerity. But they said the same thing; that they were satisfied with this section. I made that statement yesterday about this being the strongest one of any of the states of the United States. We have preserved that for our people who are concerned about keeping their rifles and shotguns; and so I say, let's leave it as it is. A few minutes ago, on this business of the death penalty, we heard people giving examples—some of the people who wanted to change this yesterday—talking about policemen getting shot down in the State of Montana and throughout the United States. This is true. We do have our police officers being gunned down, and my concern—and that's why I say there are not just nine little words. That's not all they are. There is this thing that the people of the State of Montana may someday want to take action to stop that kind of thing, and I don't believe that we should change this so that the state Legislature of the State of Montana cannot do that. So I ask this delegation, this Convention, to accept the majority report as it was given to this Constitutional Convention. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. Chairman. I don't want to belabor this body with much debate, but I was silent on this issue yesterday and I didn't think I'd need to get up and speak. I didn't think I'd have the opportunity again, either, but I see that I have. I thought our vote yesterday was rather rational. It was closer than I would expect, but considering the amount of pressure that was put upon each one of us, I can see why the vote was the way it was. There was a person from my delegation that told the people back in my home community that a number of people in my delegation were the ones that defeated the Berthelson amendment. I was rather offended by that particular report, and I guess I differ from some people in my particular delegation from my community and county in that respect. And I'm willing to stand on my conviction, as Mr. Romney is. I'm willing to go back to my community and get shot out of my saddle. I've been shot before. In 1959 I almost lost my life in a hunting accident, at the ripe young age of 13, and I'm willing to get shot again. If they want to bring a .38 right here and put it right at my head, I'll vote the exact same way as I did yesterday and I'll vote my conviction. And I'm going to watch everybody, how they vote today, and compare it as to how they voted yesterday; and I'll bet you that not one person under the age of 40 changes their votes and anybody that does change their votes is going to be over the age of 40. Thank you. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President [Chairman], fellow delegates. I have received no threats from any of my constituents, if they didn't have this in the Constitution that they would work against it. However, I think that the number of names that have been sent in to a lot of the delegates means that a lot of people are concerned about this particular issue, because they haven't come just from the Flathead country; they've come from all over the state. Now, the 500 names that Mr. Blaylock has on this telegram actually were got through a scare tactic. The word got out, or a rumor, stating that the present guns part of the bill, just as we're trying to do now with Mr. Kelleher's motion, would be to take and do away with this. And this is what created the 500 names on this telegram, so they said leave it as is. Now, handguns are a different story, and I believe that proper use of them and the law can take care of that. When President Nixon visited our Flathead last year, his Secret Service body that were there before were really concerned because there were trucks and cars and so on parked around that airport and hundreds and hundreds of guns were shown right there in public view. The sheriff was, of course, not concerned, but the Secret Service was. And he says, "You don't have to worry about those guns—they're out where they can be seen." I also have a very good friend up there in our country that has at least 20 guns. He's a gun nut, as are a lot of people, and he says, "By golly," he says, "if the United States or the government ever starts to register my guns, I might register one or two of them but, boy, the others will be hidden"; and this would make crooks out of 90 percent of the gun owners in the State of Montana. I believe we should put these nine words in there and give us another chance of selling this Constitution. Thank you.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. President [Chairman], I resent Delegate Monroe's remarks about the Geritol set. (Laughter) We, too, have our principles and we, too, vote our convictions. The thing about this that's bothered me, and I said this before, we're not taking anything away from them, we're not giving them anything. This whole issue is a sort of a mirage out in the desert. It's a will-o'-the-wisp that they're following. If registration comes, it will either come from the federal government or from the needs of the state to control crime. Thank you. Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Mr. Felt, are you up?

Mr. Harlow.

**DELEGATE HARLOW:** The issue has finally surfaced. What is a gun? The delegate from Flathead just made the remark that this registration—or these nine words did not apply to handguns; so, fellow delegates, these nine words need not be in there. If the handguns are dangerous, and one of their advocates just made the remark that this registration did not apply to handguns, then where are you going to draw the line between a one-hand gun and a two-hand gun? So, let's not be too wishy-washy. Let's keep those nine words where they were kept all night and for many, many years. We don't need those nine words. Let's remember just what was said, that they cannot—some guns should be registered and some should not, so let's keep the nine words out. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President [Chairman], I come from a country that does a lot of hunting and the people have a lot of guns. I haven't received one letter asking for this amendment—proposed amendment of Mrs. Warden's to our present Constitution. I received numerous letters from many people in the country, asking for this amendment. I've answered many of them, asking them why. First I told them how our present Constitution read and I said, "Why do you want this changed?" I received not one single answer as to why, so I'm opposed to the motion.

**CHAIRMAN GRAYBILL:** Mr. Delaney.

**DELEGATE DELANEY:** Are we debating the nine words, or are we debating Kelleher's amendment?

**CHAIRMAN GRAYBILL:** Well, it's—the Chair could sit up here and argue with each of you about what you're debating, but it's very difficult to determine whether you're debating—you know, if you strike the 12, I guess you don't get the nine words; so one side of the coin is one and one side is the other. So my inclination is to let you all talk yourselves out, and when you're all through, why, we'll vote on all these issues. And we've got several others on the Bill of Rights, so we'll continue to work when we're through, so go right ahead—have at it.

Mr. Harbaugh.

**DELEGATE HARBAUGH:** (Inaudible)

**CHAIRMAN GRAYBILL:** We are not ready to vote yet unless somebody else doesn't want to talk. Very well, now, the issue is on Mr.—

**DELEGATE KELLEHER:** Mr. Chairman, can I close?

**CHAIRMAN GRAYBILL:** You betcha, Mr. Kelleher.

**DELEGATE KELLEHER:** Thank you, Mr. Chairman. I just wish, my fellow delegates—this is like the preacher talking to the congregation, bawling them out for the people that aren't there in church on Sunday—but I just wish we had as much interest in whether we elected our judges or appointed our judges and whether we had a short ballot or a long ballot. It's very sad that we have to spend so much time on something like this. I do want to say that I don't want to take the guns from the hunters. I know people that give up good jobs to come out here so they can hunt; and I know people, in fact in my own community back in Yellowstone, that is the only meat they have is the deer and the antelope that they shoot. But the only thing that I'm really concerned about is the handguns, and I don't want mothers and kids to be able to get the handguns, that 's all. Could I have five seconds?

**CHAIRMAN GRAYBILL:** Yes, we're going to have a roll call vote, Mr. Kelleher. Now, the issue is on Mr. Kelleher's motion to delete Section 12 in its entirety. So many as shall be in favor of that, vote Aye; and so many shall be opposed to that, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegates want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot, please.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Excused |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Absent |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Absent |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Absent |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Absent |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 13 have voted Aye, 79 have voted No.

**CHAIRMAN GRAYBILL:** 13 having voted Aye, 79 voting No, Mr. Kelleher's motion fails. We're now on Mrs. Warden's motion to add the words "nor shall any person's firearms be registered or licensed" on line 19, Section 12, page 6. Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I refrained from speaking on this issue yesterday, and I'm going to be very brief today. It saddens me to see the false identification of registration with confiscation. This is simply an indication of hysteria on the part of gun people. My youngest son, Steve, is a gun expert. He has earned all the awards available in the Junior Rifle Association and the United States Navy in marksmanship, and my opposition to this amendment is on his behalf. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, there is not one scintilla of evidence that there was any intention of requiring registration of firearms in the majority report. There is no evidence that the Legislature would impose that obligation upon people, like myself, who own guns. The history tells us that in the past, in 1918 or '19—'17, during World War I, there was a registration of firearms in Montana and people turned in their registration at the sheriffs' offices in the various counties of the state. There was never any effort on the part of anybody to sequester those firearms, confiscate them. The history of the movement throughout the United States has never indicated, so far as I can ascertain, any effort upon the part of the government to confiscate guns. We have no threat of registration. I think this is a red herring that is being drawn across the trail of the Convention in order to muddy up the issue and perhaps defeat the Convention. I think that we should defeat this motion of Mrs. Warden and go on with our business.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman, everybody gets up and says, "I didn't speak yesterday and I was hoping I wouldn't today on this particular issue." It seems to me it's been well talked; but it's come to the point where you raise a question of whether you were even present if you aren't on the record on an issue like this. And so, you know, a hundred of us are going to get something on the record regarding this, and maybe that's our right and the reason we're here. I think we could make emotional statements that would inflame each other. We tried, at both ends of this thing, and I don't propose to do that. I could list how many guns I own. I'm an elk hunter and I have a Chesapeake Bay retriever and on and on, you know, those things can be shared. I was hunting elk on November 22, 1963, and I came home and heard the news about our President having been shot, and I could draw some kind of big emotional thing in terms of that experience for myself. I looked at that telescopic rifle I'd been carrying all day and I thought some very deep thoughts about what happens in a society, and what happens within each of us at times, in terms of selling out to some kind of hysteric or emotional impulse. I think the people of Montana are reasonable enough to know that there are more issues at stake that affect our lives vitally than are guns, and it seems like a cheap way to garner a lot of votes to go with this thing and say, you know, "We're going to get them, and this is a good way to do it. It doesn't really hurt anything." I see it as an opportunity to salute the intelligence of our people by saying, we do—we did what we thought was right, wherever it comes out. And really, you know, there were some issues that were more important than what we put in the Constitution with regard to our guns. It just seems to me that this promise of a lot of easy votes—and I can be a practical politician, too—but our people are smarter than that, and I'd like to salute their intelligence and vote the way I did yesterday, which is to say we have the strongest statement of any Bill of Rights. If we lived in any other state but this one and Alaska, I would be really afraid of that kind of a statement in the Bill of Rights, but we have few people and lots of space and so we're relatively safe out there hunting. Most states don't have that option; we still do. But I'm going to vote the way I did yesterday, and I wanted to be on record. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman, I rise in support of the amendment. I did yesterday. I feel very sincere about this, and that's all I'm going to say except would Mr. Schiltz yield to a question?

**DELEGATE SCHILTZ:** I yield.

**DELEGATE JOHNSON:** Mr. Schiltz, yesterday you impressed me very greatly with the knowledge you have of all types of guns, and I never—I tried to catch you to ask you a question, just individually and out in the hall or someplace, but you eluded me all the time; and I know there's other people here concerned in the same area, and I could hardly sleep last night, and I've been so concerned. You said that you could put—or take those guns apart in the dark, but you didn't say whether you could put them back together. Can you?

**DELEGATE SCHILTZ:** Yes, I did and I could.

**DELEGATE JOHNSON:** Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, just so we don't cut the debate too short, I wasn't on the record yesterday on my position on this matter. I do support Mrs. Warden's amendment, as I supported Mr. Berthelson's amendment yesterday. I don't think it's a red herring if we have letters and indications from the electorate around the state in the number of thousands, because it will amount to that. I think they have expressed their preference, and I think that we're here to do their will. And I support it and I think it will pass.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mrs. Warden's motion that we add the words "nor shall any person's firearm be registered or licensed" on line 20, after the word "question", to Section 12.

**UNIDENTIFIED DELEGATE:** Roll call vote.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of that motion, vote Aye on the voting machine; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** The last time. Very well, take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Excused |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Absent |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Absent |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Absent |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |

| | |
|---|---|
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 39 have voted Aye, 52 have voted No.

**CHAIRMAN GRAYBILL:** 52 having voted No, 39 having voted Aye, the motion is defeated.

Mr. Jacobsen, you had an amendment—do you want—a section to add. Do you want the Chair to read it?

**DELEGATE JACOBSEN:** Mr. President [Chairman], I'll hold that till another time in General Government. Thank you.

**CHAIRMAN GRAYBILL:** Mr. McKeon, you have a section here for the Chair. May we read your amendment?

**DELEGATE McKEON:** Yes, please read it, Mr. Chairman.

**CHAIRMAN GRAYBILL:** It'll be styled Section 35, proposed Section 35. Will the clerk please read proposed Section 35.

**CLERK SMITH:** "Section 35. The people of Montana declare that Montana servicemen, servicewomen and veterans of all wars may be given special considerations as determined by the Legislative Assembly." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McKeon wants to add a Section 35 concerning servicemen, stating that the Legislature may give special consideration to servicemen and women.

Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman, I move that when this committee does arise and report, that it recommend this section to pass. Mr. Chairman, this section is a permissive section to be added to the Bill of Rights, allowing the Legislature to give special consideration to veterans of wars. Mr. Chairman, there are—this section was adopted from the North Dakota Constitution. Also, Mr. Chairman, I would like to point out that Missouri just very recently adopted by constitutional amendment a section very similar to this. They adopted this by a four to one plurality. I think this exhibits the popularity of a section of this nature. Also, I would like to bring to the attention of the committee the fact that there are 100,000 veterans in the State of Montana. That, coupled with the fact that the majority of them are married or who have friends and relatives who would be very much in favor of this amendment, I think would give impetus to the Convention to pass something of this nature, perhaps just because of the salability of it. Mr. Chairman, as you, and I'm sure all the members of the Convention, are aware, the war in Vietnam has created a crisis not over there but a crisis at home. Our American fighting men and women are returning to our shores and are, as they return, Mr. Chairman, are being faced with serious problems. They many times lack education, lack the employment opportunities; many are wounded, many have become addicted to drugs; and things of this nature. I think all of us can agree that the veteran who returns now from Vietnam is at a great disadvantage when he tried to place himself back in the role of a productive citizen in this country, so I think that we should include a section of this nature in the Bill of Rights to give the Legislature an impetus to try and help these individuals who've gone over and given us the risk of their lives to protect our country, and in many occasions to fight a war in which they do not believe.

So, Mr. Chairman, without further adieu, I would recommend that this committee do pass it, because I think it is important and I think it is very good and I think what—it will be very helpful to all the people in Montana. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there discussion?
Mr. Lorello.

**DELEGATE LORELLO:** Just a short comment, Mr. Chairman. There are 43 veterans, I think, in this group of 100. I hope that we can do something for our servicemen, servicewomen, and the veterans. I hope you'll support the motion.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** I believe that the war in Vietnam, the so-called war in Vietnam, is not a declared war. And I think that, as your thing reads, you ought to take into consideration an amendment there.

**DELEGATE McKEON:** —brief amendment with the permission of the committee—

**CHAIRMAN GRAYBILL:** Just a minute. Mr. McKeon, you may have the floor.

**DELEGATE McKEON:** Thank you, Mr. Chairman. Mr. Chairman, I would request permission to amend the proposed section by deleting, on the second line, the phrase "of all wars".

**CHAIRMAN GRAYBILL:** All in favor of allowing the deletion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered. Is there other discussion? Mr. McKeon, do you need to close?

**DELEGATE McKEON:** I close, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mr. McKeon's motion to add Section 35 to the Bill of Rights, which shall state: "The people of Montana declare that Montana servicemen, servicewomen and veterans may be given special considerations as determined by the Legislative Assembly." So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. So many as are in favor, vote Aye; so many as opposed, vote No.

**UNIDENTIFIED DELEGATE:** Roll call vote.

**CHAIRMAN GRAYBILL:** Too late. Has every delegate voted?
(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** 50 having voted Aye and 39 No, the motion passes and the section is adopted. Now, Mr. Dahood, I'm afraid we did not put the motion properly, and I don't know who did it the other day, but may I say that—would you move that when this committee does arise and report, after having had under consideration Section 12, after having reconsidered it, that it recommend the same be adopted? Will you so move?

**DELEGATE DAHOOD:** I so move, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, all in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** Section 12 is closed again. Now, we have an amendment from Mr.—a proposed new section from Mr. Kelleher which I've styled 36, and it's the one on alcohol, Mr. Kelleher. May we read it from the clerk—clerk, read number 36, please.

**CLERK SMITH:** "Mr. Chairman, I move to amend by adding a new section of the Bill of Rights Committee proposal on page 11, line 10; the following words: 'Section 36. Addiction neither to alcohol nor drugs is a crime.' Signed: Kelleher."

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Go ahead.

**DELEGATE KELLEHER:** I'll be very brief, Mr. Chairman and fellow delegates. You will note that this provides merely that the disease of alcoholism and the disease of drug addiction are not crimes. I believe in the case of Power versus Texas, it was taken up to the Supreme Court of the United States, and by a five to four decision the United States Supreme Court held that being an alcoholic can be a crime. Power, or whoever the defendant was in that case, was picked up for being an alcoholic 99 times, and they thought he might be a good test case, having been picked up for being drunk 99 times. But those nine wise men—five of them, anyway—decided that alcoholism was not—that alcoholism was a crime and a man could be put in jail for it. This merely would provide that alcoholism is not a crime. And also drug addiction. Now, this has nothing to do with drugpushing, please note that. I'm just as violently opposed to drugpushing as anybody else is, but as far as this is—the person, the individual, who has a habit of—they are actually addicted to narcotics. This is where it has reached, medically, the point of being a disease, and I—this only states that it would not be a crime. In the case of Robinson versus California in 1962, drug addiction—the Supreme Court of California struck down addiction as a crime and, briefly, the court said: "A California statute makes it a misdemeanor punishable by imprisonment for any person to"—quote—'be addicted to the use of narcotics'—close quote—"and in sustaining petitioner's conviction thereunder, the California courts construed the statute as making the status"—in quotes—'the status of narcotic addiction a criminal offense for which the offender may be prosecuted'—quote—'at any time before he reforms'—close quote—"even though he has never used or possessed any narcotics within the state and has not been guilty of any antisocial behavior." The court held: "As so construed and applied, the statute inflicts a cruel and unusual punishment in violation of the 8th and 14th Amendments." Regarding the matter of alcohol, an association known as Alcoholics Anonymous was created in 1935. It has a very good record. It has a record of approximately 60 percent cures; but people, to go into AA, have to do it voluntarily, of their own free will. And we have found out a long time ago in AA—and I'm not ashamed to say that I am personally a member of AA and have been for some 14 months, because alcoholism is a disease for me, Bob Kelleher; I cannot take that first drink. I do not feel that I am a criminal because I had the disease of alcoholism, and that's all that this motion—this provision would provide, is that if a person is diseased, has the disease of alcoholism or is addicted to a narcotic, that it is not a crime. The courts would still have control over it. A man would be responsible for any crimes that he has—and he would still be—he would be responsible for any crimes he would commit under the influence of alcohol; any crimes he would commit under the influence of drug addiction. All this would do is—would provide that the person who is—that a person would not commit a crime because of the fact of addiction, that's all. Pushing, that's something else. This has nothing to do with that. And the same way with alcoholism. I have been asked, "Is alcoholism and drug addiction a crime under our present statutes?" My understanding that if you are picked up—I know it is a municipal ordinance in Billings and I think most of our communities—I'll have to bow to some of the other prosecutors here in the other communities—but I know that being picked up for—you can be picked up for public drunk and put in jail, and this would prevent that. The judge could then send you to Warm Springs or refer you to medical treatment someplace else. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, I can agree with Mr. Kelleher completely that alcoholism and drug addiction certainly should not be crimes. This was not proposed to our committee as a proposal. I can see no way that we can get into the Constitution a listing of what is and what is not a crime in the State of Montana. I think the same thing would apply to his other proposal. We did briefly consider the possibility of including crimes without victims, and here again we decided that this is a matter that has traditionally been left to statute and it is completely not appropriate for a constitutional document. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on—

Mr. Simon.

**DELEGATE SIMON:** Would Mr. Kelleher yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Kelleher, would you yield?

**DELEGATE KELLEHER:** Yes, sir.

**DELEGATE SIMON:** I've been connected for some 30 years with Billings Deaconess Hospital and I was President for some 17 years; I'm still connected. We have our problems at the hospital under the insurance acts of malpractice. We have about a hundred and thirty-five doctors on the staff. I'm not an attorney, but I would like to ask Mr. Kelleher if he would answer how and who would establish at what point an individual becomes addicted—one cigarette of marijuana, one injection of morphine—and who would establish at what point he is addicted?

**DELEGATE KELLEHER:** The same way, Mr. Simon, that we now determine how a man is declared incompetent. We lawyers and a judge in a courtroom, we bring in a couple of doctors and get medical advice and decide whether you go to Warm Springs or not. That's the only way. It'd have to be competent medical testimony, that's all.

**CHAIRMAN GRAYBILL:** Very well, the question arises on Mr. Kelleher's proposal—

**DELEGATE KELLEHER:** Mr. Chairman, could I have five seconds, please, for a roll call?

**CHAIRMAN GRAYBILL:** Okay. (Laughter) The question arises on Mr. Kelleher's motion that Section 36—"addiction neither to alcohol nor drugs is a crime"—be added to the Bill of Rights. So many as are in favor, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot, please.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Excused |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Absent |
| Cate | Nay |
| Champoux | Absent |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Absent |
| Felt | Aye |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Absent |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Absent |

| | |
|---|---|
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 15 have voted Aye, 74 have voted No.

**CHAIRMAN GRAYBILL:** Very well, 74 having voted No and 15 Aye, the motion fails. Will the clerk please read proposed Section 37 by Mr. Kelleher about incarceration.

**CLERK SMITH:** "Section 37. Incarcerated persons lose none of their human or civil rights when convicted of a felony, other than the choice of habitation, the right to vote and to hold public office. No incarcerated person may be placed in solitary confinement. Signed: Kelleher."

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, fellow delegates. There is nobody here, of course, to speak for the people in the penitentiary or in the jails of our state. Once they're convicted, they can't even vote. But this section would merely provide that when they have been convicted of a felony, that they would lose only these rights: where they're going to stay, the right to vote, and the right to hold public office. And this conforms to what we've already done in the past. I'm concerned about the fact that so many members of the minority groups end up in our penitentiaries and in our jails, and I just want their rights protected. And the last sentence of this section provides that the penalty of solitary confinement shall not be given—authorized at any time. And my reason for that is, it's my opinion it has not yet been declared cruel and unusual punishment by the United States Supreme Court but that it is, indeed, cruel and unusual punishment, even for a short time. I don't know how many of you've been in jail, other than my brother attorneys—we've been in jail many times—but every time that steel door clangs behind me, I ask myself, "I wonder if that sheriff's going to let me out of here." And it's a pretty terrible, terrible feeling. And we all know that not too long ago, within the past 10 years, a young man was placed in solitary over at Deer Lodge and was killed; he was sick. And I ask you when you vote on this matter to consider yourself. I know a lot of you are great law and order people, and I'm a law and order man or I wouldn't be a lawyer, but consider yourself—put yourself, when you vote on this, in the jail at Deer Lodge. If you have never been in jail, you can imagine what it's like. And imagine that you're in solitary confinement—and this is not a really big figment of your imagination that perhaps, just perhaps, you don't belong there. Thank you, Mr. Chairman. Could I have a roll call on this, please?

**CHAIRMAN GRAYBILL:** Well, we're going to debate it first.

Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman, would Mr. Kelleher yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Kelleher, will you yield?

**DELEGATE KELLEHER:** Yes, Torrey.

**DELEGATE JOHNSON:** Bob, just as a point of clarification, solitary confinement—now if you have a person who is very unpopular there and is in danger of bodily injury from some of the other inmates, you'd necessarily have to put him someplace, wouldn't you, to protect him from those people? And how would you call that?

**DELEGATE KELLEHER:** Protective custody. We do that for other ways, too. That would not be prohibited.

**DELEGATE JOHNSON:** I mean, that would be provided for okay without—

**DELEGATE KELLEHER:** Yes, I'm glad you asked me that, in case this is accepted. That, of course, would be a valid exemption; to protect the man for his own physical well-being, he could be protected and set aside from the other inmates. That's right.

**DELEGATE JOHNSON:** I see. Thank you. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, would Delegate Kelleher yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Kelleher?

**DELEGATE KELLEHER:** Yes, sir.

**DELEGATE McNEIL:** Bob, in reading your three other proposed amendments, does this mean that an incarcerated person in jail would have a right to drugs, liquor and sex?

**DELEGATE KELLEHER:** Well, how many—how much time can I have on that one?

**CHAIRMAN GRAYBILL:** Well, I'll rule it out of order for you, Mr. Kelleher.

**DELEGATE KELLEHER:** Thanks for the help, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Artz.

**DELEGATE ARTZ:** Mr. Chairman, would Delegate Kelleher yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Kelleher?

**DELEGATE KELLEHER:** Mr. Artz.

**DELEGATE ARTZ:** I want to have the record straight. I'm not a lawyer and I don't know exactly what you mean by "solitary confinement". Does that mean they have to have roommates, or can't they put one in a cell by himself? Thank you.

**DELEGATE KELLEHER:** No, that's a good question, too. What if it's a friendly little town; it's only got one customer in the jail? Obviously, he's in solitary confinement, but he's got the company of the sheriff and he can play stud poker with the sheriff. I'm not talking about that sort of thing. We don't have to provide company for them, no. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, would Mr. Kelleher yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Kelleher?

**DELEGATE KELLEHER:** Yes, sir.

**DELEGATE CHOATE:** Mr. Kelleher, I'm wondering about, when you say he'll lose none of his human or civil rights except those specified, what about right of communication and that sort of thing?

**DELEGATE KELLEHER:** I think he should have that right. If we want to censor it—his mail, that's all right. I'll tell you what I had, frankly, in mind. The human rights is what bothers me. In a penitentiary, and it's a problem in our state—our state is not as—our penitentiary is not heavily populated as, say, Sing Sing or someplace like Pennsylvania's. But in the State of Maryland, a young 18-year-old white boy was attacked by 12 other inmates of another race, and he was in surgery for 12 hours, and I just want those young men or women—I don't know what it's like in a ladies' penitentiary—but I want those people to be protected. When they—even when—though they're in prison, they're human beings, and they're not to be treated like dirt. We treat our cattle and our sheep better than we treat the human beings in our penitentiaries, and this would protect their rights. That's all I have intended by this.

**CHAIRMAN GRAYBILL:** Very well, the question arises on Mr. Kelleher's proposed Section 37 about incarceration of persons; losing their civil rights in jail. So many as shall be in favor of that motion—did you ask for a roll call on this, Mr. Kelleher?

**DELEGATE KELLEHER:** Yes.

**CHAIRMAN GRAYBILL:** You did? (Laughter) Okay. So many as shall be in favor, vote Aye on the voting machines; so many as shall be opposed, vote No. Have all the delegates voted?
(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** Please take the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Excused |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Absent |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Absent |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Absent |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Absent |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Absent |
| Hanson, R.S. | Nay |
| Hanson, R. | Absent |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Absent |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Absent |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Absent |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 18 have voted Aye, 66 have voted No.

**CHAIRMAN GRAYBILL:** 66 having voted No and 18 Aye, the motion fails. Mr. Kelleher, we'll read Number 38 now.

**CLERK SMITH:** "Section 38. Private sexual acts between consenting adults do not constitute a crime." Section 38, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Kelleher has proposed a Section 38 to read: "Private sexual acts between consenting adults do not constitute a crime."

Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, a typographical error omitted the word "private". The adjective should be in front of "sexual acts". I just don't want any off-Broadway plays down on 27th Street in Billings. So the word "private" should be added at the beginning. Our present sodomy statute provides that every person who is guilty of the infamous crime against nature committed with mankind or any animal is punishable by imprisonment in the state prison not less than 5 years. In other words, you can get life imprisonment under our present statute; and our court has held that this is not only a difficult case—an easy case to charge a person with, matter—but there is—as a result of intense prejudice, naturally you vote by such a charge or—convicting upon slight evidence, since the charge is easily made, hard to prove, and still harder to disprove. The State of Texas has now declared this type of statute, at least for married couples, as unconstitutional, and I'm not going to go through that decision as I planned, because of the lateness of the hour. And this is my last amendment, I assure you—the last one for the day. (Laughter)

**CHAIRMAN GRAYBILL:** Wait a minute, Mr. Kelleher, we've got you on the record on that first statement. (Laughter)

**DELEGATE KELLEHER:** It's primarily concerned to handle the problems of homosexuality, which, again, is a physical-mental disease. And I'm not a doctor—I'm having enough trouble practicing law with a license without trying to practice medicine without one—but this is a very serious problem today. And this, once again, where competent medical authority has declared that somebody is a homosexual that that's what it's primarily aimed at; that these people would not be put in jail for having a disease. Thank you, Mr. Chairman. Could I have a roll call on this? It's the last one.

**CHAIRMAN GRAYBILL:** Well, you've only got two seconds so far, Mr. Kelleher. (Laughter) Okay, is there debate or discussion? Very well, the issue arises on Mr. Kelleher's Section 38, which would add a section to the Bill of Rights that "Private sexual acts between consenting adults do not constitute a crime." So many as are in favor of that, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Will you please take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Excused |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Absent |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Absent |
| Conover | Nay |
| Cross | Absent |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Absent |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Absent |

| | |
|---|---|
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Absent |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Absent |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CHAIRMAN GRAYBILL:** No photographs, please.

**DELEGATE CATE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** I don't want any inference drawn from the fact that Mr. Campbell and I voted together. (Laughter)

**CHAIRMAN GRAYBILL:** Will the clerk please announce the vote.

**CLERK SMITH:** Mr. Chairman, 16 have voted Aye; 69 have voted No.

**CHAIRMAN GRAYBILL:** 69 people having voted No and 16 voting Aye, the amendment fails.

Mr. Harper, may we read your proposal?

**CLERK HANSON:** "Mr. Chairman. Having voted on the prevailing side, I move to reconsider Section 10 as amended, of the Bill of Rights Committee Proposal Number 8. Signed: Harper."

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper has proposed to reconsider Section 10. Mr. Harper—on the issue of reconsideration.

**DELEGATE HARPER:** It's going to be hard for Delegate Ask to follow that act of Kelleher; but he asked me, since I voted on the prevailing side, if I would make this motion, and I do. And I now ask—for reasons of reconsideration, I yield to Delegate Ask.

**CHAIRMAN GRAYBILL:** Mr. Ask.

**DELEGATE ASK:** Mr. Chairman. Thank you, Delegate Harper, for making the motion to reconsider. We had Section 10 under consideration the other evening and maybe we acted rather hastily. I like the section, but I—if you'll all recall, and turn to Section 10, we deleted the last phrase "without the showing of a compelling state interest". And this went through rather hurriedly, and I got to considering that and became concerned about it; and I've talked to other attorneys here who are also concerned, and I have also talked to the members of the Bill of Rights. We maybe disagree on interpretation, but I think we should reconsider this section, not deleting it but putting back in the verbiage that the majority proposal proposes here. Now, the reason I say this is, the right of privacy has come down through the years by a case law, the U.S. Supreme Court and our Supreme Court; and they go on the idea of what's reasonable, the privacy that's justifiable as in regard to the state. And I think when we have the wording here that we presently have in Section 10—the way we adopted it, it says: "The rights of individual privacy is essential to well-being of a free society and shall not be infringed". So we're making this absolute now, and I don't think there's even hardly any opening for a court interpretation of this. At least, this is my view of it. I also contacted the Attorney General's office on that. They didn't want to become involved in anything on the Convention, but I requested them; I was a delegate; I felt that being in law enforcement, this would concern them. And they feel that the wording of this section is rather strong and it cannot be infringed and it could stop everything. And they didn't know how it would be interpreted by the court. Now, I also called Professor Elison—I believe Mr. Campbell has talked to him on the phone—and he indicated that he had looked at this section the way the majority proposal had it, and he was satisfied with it and thought it should be in the Constitution. I talked to him today and posed the question of how this would be interpreted. This is a—we've now made it an absolute right, just like religion; we can't interfere with religion by any statute whatsoever. No one can do anything about it, and it's in the Constitution. And he said, "Well," he said, "I don't know for sure how the court would interpret that, whether they'd interpret it with Section 11; I don't know how." Now, I don't know how either, but are we going to put something into the Constitution that we don't know how the courts are going to interpret it? Shouldn't we put something in there that's clear? And I submit that we don't have absolute, complete right of privacy in all phases. The U.S. Supreme Court doesn't feel that way, and certainly when there is a compelling state interest, they can invade privacy. Now, I don't know what we're doing here, but I think the majority proposal is right, that we should leave those words in there. And if you'll read their comments on the next page, it's a—they are showing the reasons for this section and how flexible—how it's going to work. By putting these words in, we're giving direction to the court how they are going to interpret this. If there's no compelling state interest, you can't invade a person's right of privacy. And this is going to have to be shown, and this is the direction to the court. And I submit that we should reconsider this section and put the original wording in as the majority of the committee proposed, so we clarify this issue and don't cloud it up and create a legal hassle in the years to come. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Campbell. This is on the issue of reconsideration.

**DELEGATE CAMPBELL:** Right. I oppose the motion for reconsideration in this matter. The right of privacy is a right that has been established for some time. I'd like to quote you out of a federal case, just briefly, in Connecticut. "The right was first suggested by the famous Warren and Brandeis article in the *Harvard Law Review* in 1890. There are 22 American states which have recognized the right as part of their common law. In recent years the trend has been especially pronounced. Law review support is practically unanimous. Since 1936, no court in any state has denied the right. As recently as 1952", this federal case goes on, "Illinois and Montana adopted the right by express holding and with no misgivings." I submit to you that we do have in Montana a Supreme Court case which does hold that the right of privacy is embraced within the absolute rights of personal security and personal liberty. The basis of the right of privacy is the right to be let alone and is part of the right to liberty and pursuit of happiness, and they quote cases. I suggest to you that the Supreme Court is not going to be bound on this. They certainly are going to interpret the right of privacy. We had much discussion before our committee, and why not try to define the right, to put in specific examples. But it was our feeling that once you do that, you are running a risk that you may eliminate other areas in the future which may be developed by the court. As you have seen in the *Montana Standard*, they feel this right is a right that should have express protection in the Constitution. I think that the words that were deleted did not add anything. The court when interpreting this will of course interpret this to mean that there must be some limitations. It's not absolute. They have interpreted this in the past on what this is. I feel that it will be interpreted properly in the future, and I think that once we get into this, we could open up the entire area that our committee spent many, many hours considering. And I feel that it is proper the way we amended it and that I would oppose this reconsideration. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on—

**DELEGATE ASK:** May I close?

**CHAIRMAN GRAYBILL:** Mr. Ask, yes.

**DELEGATE ASK:** I would like to close on that. Mr. Campbell mentioned that this is recognized in so many states. I agree the federal government recognizes it, but they do not recognize it as an absolute right like we have written it into this section here. I think we're creating problems. I'm not against the right of privacy, but I think we're creating more legal problems if we don't give some direction. And these cases don't hold that this right of privacy is absolute. They all go by what's reasonable; what's justifiable. Now, there's the latest United States case, United States versus White; it was decided April 5, 1971, and in there it was quoted: "Our problem in terms of principles announced in Katz," which was a previous case, "is what expectations of privacy are constitutionally justifiable, what expectations the 4th Amendment will predict—protect in the absence of warrant." So they're under the 4th Amendment. There's nothing in the federal Constitution that gives this right of privacy. They've interpreted it from the 4th Amendment. Then going on, it says: "particularly under the 4th Amendment, which is ruled by fluid concepts of reasonableness." So you have to, when they interpret this section, you have to go to whether it's justifiable and the reasonableness of it; and I think if we add the remainder of this Section 10 that the majority committee came out with for our proposal, that we will be going in that direction and we will avoid a lot of misunderstanding of this section, misinterpretation. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the question arises on Mr. Harper's motion that we reconsider Section 10. You've heard the discussion. All in favor of reconsidering Section 10, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. All in favor of reconsidering, say Aye; and all opposed, say No. Have all the delegates voted?
(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** 56 having voted Aye and 33 having voted No, we'll reconsider Section 10.
Mr. Ask.

**DELEGATE ASK:** Mr. Chairman. I move that we adopt Section 10, the right of privacy, in the full wording as proposed by the committee on the majority proposal—it's on page 23—that we—with the word "individual" that was included in the amendment and include the entire wording of that section. And I have given the reasons before, and I will not belabor the point. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, the Bill of Rights Committee has no objection. In the final analysis, I don't think the fears that have been expressed are valid; but nevertheless, we have no objection to adding that particular clause so that the right will read as originally submitted to this body.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I'd just like to put in one more little lick. The reason I said it in the first place—put a period there—"without the showing of a compelling state interest" is not defined, at least clearly, in my mind as to who must show the compelling interest, what it must be, and who decides what it must be. Section 11 deals with search and seizures, puts a limit on the—a limitation on the kind of invasion of privacy that the government can legally do. I guess I'm just not that worried about the state taking care of itself as I am worried about the individual being able to take care of his own privacy.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, I think that with the words "without the showing of a compelling state interest", that the thing is made meaningless. With the addition of those words, it's meaningless.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Ask's motion that we add back in the words "without the showing of a compelling state interest". So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted.

Mr. Dahood, do you want to move Section 10 for me?

**DELEGATE DAHOOD:** Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 10 as now amended, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** So ordered.

Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I move that the committee rearrange its calendar by passing the consideration of all other matters before General Orders at this sitting of the committee.

**CHAIRMAN GRAYBILL:** The motion is to pass all other matters on General Orders. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I move the committee rise and finally report.

**CHAIRMAN GRAYBILL:** The motion is that this committee rise and finally report.

Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. President [Chairman], could I have the record show that I made a mistake in voting not to put the death penalty on the ballot? I'd like to show that I was in favor of that, please.

**CHAIRMAN GRAYBILL:** Very well, the record now shows that. The motion is to rise and finally report. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed

(No response)

**CHAIRMAN GRAYBILL:** So ordered Now, if you'll just wait till it's ready we'll do that

(Proceedings moved from Committee of the Whole to Convention. President Graybill in Chair.)

**PRESIDENT GRAYBILL:** Since it's getting late, the Chair would like to make an announcement or two while we're waiting for it to be printed. Please understand that John Gardiner the ex-Secretary of Health, Education and Welfare, is in town and will be addressing us in this Convention Hall at 8:00 p.m. tonight This is on our Distinguished Speakers Series, as you know, and there is a cocktail hour that begins awfully quickly, if you want to get there. We'll try and adjourn in time. It's at the Colonial Club. Other than that, we'll expect to see you back, if you'd like to hear Mr. Gardiner, at 8 o'clock tonight, but not until we adjourn. Mr. Harbaugh—just a moment

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, might we be advised of what the schedule will be tomorrow?

**PRESIDENT GRAYBILL:** Well, tomorrow we're going to start on Style and Drafting and I think—and we also have Section—and we also have some matters up on Order of Business Number 5, the General Government matter that we thought we'd get to today—General Government and Legislature on Order of Business Number 5. Style and Drafting—I think Judiciary is not up, because it has not been there long enough—and after we finish Style and Drafting—finish Order of Business Number 5, I presume we'll be on Education, which is next up

Mr. Foster

**DELEGATE FOSTER:** Mr Chairman, does the Chair have either an inkling or indication of what the schedule—if we will be working Monday, or whether there's a possibility, or—

**PRESIDENT GRAYBILL:** There's a possibility, but the Chair—we're only 1 day behind now, but I am hoping we won't be 1 day behind after another day or so, or 2 days The Chair really wouldn't know until probably at least Friday night. We are 1 day behind, as you all know now, plus some style and drafting

**DELEGATE FOSTER:** Thank you, Mr. Chairman.

**PRESIDENT GRAYBILL:** So I think there's a chance we might work Monday, yes. Will the clerk please read the Committee of the Whole report.

**CLERK HANSON:** "March 9, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 8 of the Committee on Bill of Rights, recommend as follows: that the committee pass consideration of other business on General Orders; that the committee rise and report. Signed: Graybill, Chairman."

**PRESIDENT GRAYBILL:** Is there anyone who wants the Committee of the Whole report read in its entirety? If not, we'll pass that.

Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move we adopt the Committee of the Whole report and refer the Bill of Rights Proposal Number 8 to Committee on Style and Drafting.

**PRESIDENT GRAYBILL:** The motion is to adopt the Committee of the Whole report and refer this Bill of Rights Article to Style and Drafting. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So ordered. Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move we adjourn until Friday, March 10th, 9:00 a.m., 1972.

**PRESIDENT GRAYBILL:** The motion is to adjourn until tomorrow morning at 9:00 a.m. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** Thank you. So ordered.

(Convention adjourned at 6:00 p.m.)

**March 10, 1972**
**9:10 a.m.**

Forty-Second Day

Convention Hall
Helena, Montana

**PRESIDENT GRAYBILL:** If you'll all stand, Delegate Scanlin will lead us in the invocation this morning.

**DELEGATE SCANLIN:** "The shouting and the tumult dies, the captains and the kings depart. Still stands that ancient sacrifice and a humble and a contrite heart." With these thoughts of Kipling in mind, let us pray. Suffering long hours of what seems to us to be interminable debate, help us, O Lord, to keep our prize in view. Let us neither gloat in times of victory or become glum in moments of defeat. May we heed the lesson of St. Paul when he wrote: "I have learned in whatsoever state I am, therein to be content." Amen.

**PRESIDENT GRAYBILL:** We'll take attendance by voting Aye on the voting machines, please.

**CLERK HANSON:** Delegate Babcock, Delegate Blaylock, Delegate Brown, Delegate Campbell, Delegate Choate, Delegate Drum, Delegate Kelleher, Delegate Swanberg. Mr. President, may Delegate Furlong be excused, please?

**PRESIDENT GRAYBILL:** Yes.

**CLERK HANSON:** Delegate Blaylock, Delegate Drum, Delegate Kelleher, Delegate Swanberg.

**PRESIDENT GRAYBILL:** There's Drum.

**CLERK HANSON:** Delegate Blaylock, Delegate Kelleher, Delegate Swanberg.

**PRESIDENT GRAYBILL:** Push the button, Mr. Drum, and we'll close the ballot. Mr. Drum, push the button. Very well, take the attendance.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Absent |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Excused |
| Garlington | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |

| | |
|---|---|
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |
| Mr. President | Present |

**CLERK HANSON:** Mr. President, Delegate Swanberg present; 98 delegates present, 1 absent, 1 excused.

**PRESIDENT GRAYBILL:** Who is absent?

**CLERK HANSON:** Blaylock.

**PRESIDENT GRAYBILL:** Blaylock and Kelleher—is Kelleher here?

**CLERK HANSON:** Yes, Kelleher is here.

**PRESIDENT GRAYBILL:** He's here? Blaylock is missing. Very well, Order of Business Number 1, Report of Standing Committees.

**CLERK HANSON:** "Mr. President. We, your Committee on Style, Drafting, Transition and Submission, submits to the Convention Report Number 6, Natural Resources and Agriculture. Signed: John M. Schiltz, Chairman; William Burkhardt, Vice-Chairman."

**PRESIDENT GRAYBILL:** Very well, that may be—is being printed and will be put upon your desks and is placed on General Orders. Reports of Select Committees.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 3, Communications. Mr. Clerk—Mr. Schiltz, are you on 1?

**DELEGATE SCHILTZ:** Are we on 1? Yes. Reports of Standing Committees. May we go back there?

**PRESIDENT GRAYBILL:** All right, back to Order of Business Number 1, Style and Drafting's Natural Resources is accepted.

**DELEGATE SCHILTZ:** No, I'm referring to the Legislative Article, which Style and Drafting reported back under Order of Business Number 5—and is—

**PRESIDENT GRAYBILL:** Right.

**DELEGATE SCHILTZ:** —was on the desks yesterday.

**PRESIDENT GRAYBILL:** We're going to take care of that later. You're out of—you're up too quick.

**DELEGATE SCHILTZ:** Well, no, I just wanted to report it back under Order of Business Number 1 so you could refer it.

**PRESIDENT GRAYBILL:** Oh, very well. And Executive, also?

**DELEGATE SCHILTZ:** And Executive also, yes, but I—well, I don't think we need to report that back, but we do. All right, we'll report Executive back, too.

**PRESIDENT GRAYBILL:** All right, Legislative and Executive are back for Order of Business Number 5. Now, we went through Order of Business Number 2. On Order of Business Number 3, Communications, the Chair would like the record to show that last night, as the fourth speaker on our distinguished speakers series, we had John N. Gardiner here, who spoke to some of the delegates and who gave an excellent address, for which we are thankful.

**CLERK HANSON:** John W. Gardiner.

**PRESIDENT GRAYBILL:** John W. Gardiner; all right. Order of Business Number 4, Introduction of Proposals.

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Now, Order of Business Number 5, Final Consideration of Proposals.

Mr. Murray.

**DELEGATE MURRAY:** Mr. President, it's my understanding that the Legislative Style and Drafting report that Mr. Schiltz just gave verbally—that there are a—some matters, a matter or two, which should be discussed in the Committee of the Whole before we vote on this matter on—under Order of Business Number 5. So I would move at this time that we advance to Order of Business Number 10, which is General Orders, for the specific and limited purpose of considering this report on the Legislative Style and Drafting.

**PRESIDENT GRAYBILL:** Very well, you've heard the motion of Mr. Murray that we advance from Order of Business Number 5 to Order of Business Number 10 for the specific purpose of handling some minor changes in the Legislative Article placed before you. All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** All right, we're now—

Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move the Convention resolve itself into Committee of the Whole for the consideration of the Legislative Style and Drafting report under General Orders.

**PRESIDENT GRAYBILL:** Very well, all in favor of that motion, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** So ordered.

(Convention resolved itself into Committee of the Whole. Leo Graybill, Jr., in Chair)

**CHAIRMAN GRAYBILL:** Mr. Schiltz, will you explain the problems in the Legislative Article.

**DELEGATE SCHILTZ:** Yes, Mr. Chairman and members of the committee, we shortcutted a little bit here. I hesitate to use that word because it might have a bad connotation in view of all the queries I got yesterday, but had we followed normal routine, we would have made some of these very minor changes on the Legislative Article and reported it back for ripening for 2 days under the Committee of the Whole and then we would have got to it some other time when everybody would have forgotten it. The changes were, indeed, minor. And you'll recall that the other day I asked that it be rereferred to Style and Drafting so we could incorporate the amendments that were made and also look for any anomalous situations that might have been created that we overlooked. So the report that you should be looking at is called unicameral—and—up in the upper right-hand corner—and it says, "Order of Business Number 5, Final Consideration, Style and Drafting, Legislative, Number 3." That's the one you should be looking at.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does rise and report, after having had under consideration Order of Business Number 5, Style and Drafting report, Legislative Article, that it adopt the committee's report as to Section 4.

**CHAIRMAN GRAYBILL:** Very well, will you explain Section 4, Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, here we're just making parallelism between the unicameral and the bicameral, and we inserted the words "for the Legislature" on lines 18 and 19.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 4?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of Mr. Schiltz's motion as to Section 4, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 8 of the unicameral portion of Style and Drafting's report, that it recommend the same be adopted as amended.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** In this case, on line 14 again, we added the words "member of the Legislature" for parallelism.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 8?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Mr. Schiltz's motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10 of Style and Drafting's report, it recommend the same be adopted as amended.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** In this case, we added the words, on line 29, "by law", and again for parallelism.

**CHAIRMAN GRAYBILL:** Is there any discussion?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Mr. Schiltz's motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** And Section 10 is adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 14 of Style and Drafting's report, unicameral section of the Legislative Article, that it recommend the same be adopted, as amended.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Section 14 is on page 4.

**DELEGATE SCHILTZ:** That's right. We made a capital letter out of the "t" on line 29, and we changed—we added the word "senator", over on page 5, line 1. Otherwise, no problems.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 14, sub. 1?
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 15, sub. 3, sub. (b), of the Style and Drafting report on the unicameral Legislative Article, that it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz, you've lost me. What page?

**DELEGATE SCHILTZ:** On page 6. We're talking about line 10.

**CHAIRMAN GRAYBILL:** Page 6, line 10.

**DELEGATE SCHILTZ:** This, as you will remember on Section 15, is more of the transition section in case we go back to bicameral, and we found that we had changed the numbers in the major sections but had not changed them into this—sections that are picked up in toto and put into the bicameral—put in as bicameral sections. Otherwise, there's no problem there.

**CHAIRMAN GRAYBILL:** All right, is there any discussion on Section 15, sub. (b)?

**DELEGATE SCHILTZ:** That should be sub. 3, sub. (b).

**CHAIRMAN GRAYBILL:** Sub. 3, sub. (b).
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** That's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 15, sub. 3—no, sub. 5, sub. (e), on page 7 of the Style and Drafting report on the Judicial Article, that it recommend the same be adopted as amended.

**CHAIRMAN GRAYBILL:** All right, 15-5 (e) on page 7. It's styled Section 13 after the (e), so you can find it there on line 9.
Mr. Schiltz.

**DELEGATE SCHILTZ:** In this case, we incorporated the—again, this is still under Section 15—and we picked up the impeachment provisions pertaining to the bicameral section.

**CHAIRMAN GRAYBILL:** And this implements Mr. Harlow's amendment?

**DELEGATE SCHILTZ:** That's right.

**CHAIRMAN GRAYBILL:** Is there any discussion of this section?
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 15, sub. 5, sub. 2, on line—on page 7, line 16, that it recommend the same be adopted as amended.

**CHAIRMAN GRAYBILL:** All right, that's 15-5, sub. (e), sub. 2.

**DELEGATE SCHILTZ:** Right, sub. (e) sub. 2.

**CHAIRMAN GRAYBILL:** On line 17. Go ahead.

**DELEGATE SCHILTZ:** Again this is the picking up of the bicameral portion to insert into Section 15, and it is the Harlow amendment.

**CHAIRMAN GRAYBILL:** All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** So ordered.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 9 of the bicameral portion after the divider page, which is page 2, that it recommend the same be adopted as amended.

**CHAIRMAN GRAYBILL:** Section 9 is on page 2 after the divider?

**DELEGATE SCHILTZ:** Right.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, we again are straining for parallelism, and we inserted here "member of the Legislature" instead of "no senator or representative".

**CHAIRMAN GRAYBILL:** And the term "Legislature" in place of "either house".

**DELEGATE SCHILTZ:** And the same would be true in that same section on line 29, "either house" and "the Legislature". That's right.

**CHAIRMAN GRAYBILL:** Is there any discussion?
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** Section 9 is adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 14 of the bicameral portion, which will be found on page 5 of the Style and Drafting report on the Legislative Article—I'm talking now about 14, sub. 3, on page 5—that it recommend the same be adopted. I really hate even to talk about this, because all we did was strike a comma on line 30, but we are thorough.

**CHAIRMAN GRAYBILL:** Is there any discussion about the saving in time and space by striking that comma on line 30? (Laughter)
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** So ordered.

**DELEGATE SCHILTZ:** That concludes the Style and Drafting report, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, since we're here for the limited purpose of doing just what we have now completed doing, I move that the committee rise and finally report on Style and Drafting report on the Legislature, which is Style and Drafting Report Number 3.

**CHAIRMAN GRAYBILL:** The motion is to rise and finally report. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Proceedings revert to Convention from Committee of the Whole, President Graybill presiding.)

**PRESIDENT GRAYBILL:** Will the clerk read the Committee of the Whole report.

**CLERK HANSON:** Do you want it all read?

**PRESIDENT GRAYBILL:** No, read the title and the—

**CLERK HANSON:** "March 10th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 3 of the Committee on Style and Drafting, Legislative, unicameral and bicameral, recommend as follows: that the committee rise and finally report on Style and Drafting Report Number 3. Signed: Leo Graybill, Chairman."

**PRESIDENT GRAYBILL:** Without objection, we will not read the whole report. Is there a motion, Mr. Murray, to adopt the report?

**DELEGATE MURRAY:** Mr. President, I move we adopt the Committee of the Whole report and refer Style and Drafting on the Legislative, which is Style and Drafting Report Number 3, to Order of Business Number 5.

**PRESIDENT GRAYBILL:** All in favor of the motion, please say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** So ordered.

**DELEGATE MURRAY:** Mr. President.

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** I move the Convention revert to Order of Business Number 5.

**PRESIDENT GRAYBILL:** The motion is to revert to Order of Business Number 5. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** So ordered. Very well, on Order of Business Number 5, the Chair would like to make a little explanation for you. If you'll take the Order of Business Number 5 reports of the Convention that we now have—Number 1, on Suffrage and Elections; Number 2, Constitutional Revision; Number 3, Legislative; and Number 4, Executive—we will go through these this morning. The rules require that these be adopted section by section. We will not read subsections. They also require—or, the intent is to do this without debate. Now, you should all know whether you have any objection and intend to vote against, either for the record or because 51 percent of you want to, any particular sections that have now been adopted and gotten to this stage. But for the record, we must take a roll call vote on each section. That takes a little time. We will not read the section. We will read the title and take the roll call vote, and we will not read subsections. Now, the first one we'll do this morning is Number 1, Suffrage and Elections. Mr. Clerk, Section 1.

**CLERK HANSON:** "Section 1. Ballot."

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 1, vote Aye on the voting machine; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Take the ballot, Mr. Clerk.

Mr. Schiltz, for what purpose do you rise?

**DELEGATE SCHILTZ:** Mr. Chairman, my voting machine is not registering up there, I guess.

**PRESIDENT GRAYBILL:** Well, you may not have voted quickly enough. I may have cut you off.

**DELEGATE SCHILTZ:** I vote Aye in any case.

**PRESIDENT GRAYBILL:** All right. We'll catch you next time around then.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Absent |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Absent |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |

| | |
|---|---|
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Absent |
| Payne | Absent |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Absent |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**PRESIDENT GRAYBILL:** I don't think you need to—well, announce the vote in numbers.

**CLERK HANSON:** Mr. Chairman, 89 delegates voting Aye, no delegates voting No.

**PRESIDENT GRAYBILL:** Very well, Section 2.

**CLERK HANSON:** "Section 2. Qualified electors."

**PRESIDENT GRAYBILL:** So many as are in favor of Section 2, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Any delegate who sees his voting machine is not working?

(No response)

**PRESIDENT GRAYBILL:** Very well, close the ballot. Take the vote, please.

**DELEGATE FELT:** Felt votes Aye.

**PRESIDENT GRAYBILL:** Felt votes Aye.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |

| | |
|---|---|
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. Chairman, 88 delegates voting Aye, 7 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 3.

**CLERK HANSON:** "Section 3. Elections."

**PRESIDENT GRAYBILL:** So many delegates as shall be in favor of Section 3, vote Aye on the voting machines; opposed, No. Has every delegate voted?

**UNIDENTIFIED DELEGATE:** No.

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Clerk will cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Drum | Aye |
| Driscoll | Aye |
| Eck | Absent |
| Erdmann | Aye |

| | |
|---|---|
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. Chairman, 82 delegates voting Aye, 12 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 4.

**CLERK HANSON:** "Section 4, Eligibility for public office."

**PRESIDENT GRAYBILL:** Every delegate in favor of—any—please vote Aye in favor of Section 4 and No on the voting machines if you're not in favor of Section 4. Every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

**DELEGATE ROBINSON:** Robinson votes Aye.

**PRESIDENT GRAYBILL:** Robinson votes Aye.

**DELEGATE ROMNEY:** Mr. Chairman, Romney votes No.

**PRESIDENT GRAYBILL:** Are these changes, or are these nonrecorded votes?

**DELEGATE ROMNEY:** Nonrecorded.

**DELEGATE ROBINSON:** Nonrecorded.

**PRESIDENT GRAYBILL:** All right; Mr. Romney votes No, Mrs. Robinson votes Aye. Was there another one?

**DELEGATE RYGG:** Rygg votes No.

**PRESIDENT GRAYBILL:** Rygg votes No.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |

| | |
|---|---|
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Absent |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Absent |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. Chairman, 88 delegates voting Aye, 5 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 5.

**CLERK HANSON:** "Section 5. Result of elections." Mr. President.

**PRESIDENT GRAYBILL:** Section 5. So many as shall be in favor of Section 5, vote Aye on the voting machines; so many as opposed, vote

No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

(Mrs. Speer waved flag from back row to attract Chair's attention)

(Laughter)

**PRESIDENT GRAYBILL:** Stick with me, Mrs. Speer. Do you have some point?

**DELEGATE SPEER:** I vote Yes.

**PRESIDENT GRAYBILL:** Mrs. Speer votes Yes on Number 5.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |

| | |
|---|---|
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. Chairman—Mr. President, 96 delegates voting Aye, none voting No.

**PRESIDENT GRAYBILL:** Section 6.

**CLERK HANSON:** "Section 6. Privilege from arrest." Mr. President.

**PRESIDENT GRAYBILL:** So many delegates as support Section 6 vote Aye; and opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Absent |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |

| | |
|---|---|
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**PRESIDENT GRAYBILL:** Would the floor manager mind looking at his telephone?

Mr. Blaylock, for what purpose do you rise?

**DELEGATE BLAYLOCK:** To announce my presence.

**PRESIDENT GRAYBILL:** Very well, show Mr. Blaylock's presence in the journal.

(Pause while voting machine being repaired)

**PRESIDENT GRAYBILL:** The Chair—as is obvious, the machine has jammed here a minute and we're fixing it. At the time we adopted the rules, that roll call vote on every section seemed like such a good idea, (Laughter) but if that voting machine breaks, I wonder whether we'll rue the day—

Mr. Scanlin.

**DELEGATE SCANLIN:** While we're having a little trouble with the machine, I just wanted to register my protests to the next article that's coming up as an insult to our intelligence and an afront to future generations. Thank you, Mr. President.

**PRESIDENT GRAYBILL:** All right; we'll consider that not debate, Mr. Scanlin. Okay? The committee will be in order. Have you announced the vote for Section 6?

**CLERK HANSON:** Mr. President, 91 delegates voting Aye, 2 voting No.

**PRESIDENT GRAYBILL:** Now, Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, I rise for a suggestion on this. If we have to have roll call votes, since there's only two or three people voting No on each one of these, why don't we go through these section by section and have those people who are opposed stand and we take their names and the rest of us are counted as voting Aye? And it will speed it up and maybe save the machine.

**PRESIDENT GRAYBILL:** Well, now, Mr. Blaylock, I appreciate your suggestion, but the machine is fixed. It's the same old thing with typewriters. The ribbon ran off the end; it didn't reverse. That happens to everybody's typewriter sooner or later. I think it'll be all right. I think that we may be presumptuous in assuming that we aren't going to get a number of negative votes; and everyone does have a right—and, in fact, the rules require—and, in fact, I think we have to get everyone on record. And this, unfortunately, is the crucial vote on which we have to do that. If the machine, in fact, is broken and won't take a lot more, why, we'll pass this order and we'll get the man over and fix it. But I think we do have to get everyone on the record and everyone has a right to register his protest, and I think we'll be able to do it. I realize that it's time-consuming, but that's, unfortunately, the nature of our business. Thank you. Ladies and gentlemen, you have passed each article of Suffrage and Elections Article, and the Chair will now rerefer Suffrage and Elections, as passed, back to Style and Drafting for inclusion in the final product. Very well, we'll proceed to the Constitutional Revision Article, Number II. Constitutional Revision Number Roman II, Section 1.

**CLERK HANSON:** "Section 1. Constitutional convention." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 1 of the Constitutional Revision Article, please vote Aye on the voting machine; and so many as shall be opposed, please vote No.

**DELEGATE HABEDANK:** Mr. President.

**PRESIDENT GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** The copy I

have, unless there's been another one put out, does not show the words "and unlimited" written in. Is this—have these been written into the ones we're voting on?

**PRESIDENT GRAYBILL:** Where is the word "unlimited"? I understand you're looking at the wrong copy. Let me see your copy, Mr. Clerk.

**DELEGATE HABEDANK:** Thank you very much, Mr. President.

**PRESIDENT GRAYBILL:** This should be headed Order of Business Number 5, Final Consideration, Style and Drafting, Constitutional Revision, Number II—Roman II. Is everybody with us now? And this is Section 1, Constitutional Convention. All in favor, vote Aye; all opposed, vote No. Does any delegate—have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Let's put it this way: all the delegates have not voted; does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Absent |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |

| | |
|---|---|
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 94 delegates voting Aye, no delegates voting No.

**PRESIDENT GRAYBILL:** The Chair has just checked with the Rules Committee, and it is true that you do not have to vote on these things, but you are shown as absent on the vote if you don't vote on these things. So either vote or expect to be shown absent in the journal forever. (Laughter) Very well, Section 2.

**CLERK HANSON:** "Section 2. Initiative for constitutional convention." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 2, vote Aye on the voting machines; and opposed, vote No.

**DELEGATE BATES:** Mr. Chairman.

**PRESIDENT GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** I notice in both of these sections that we—when we looked out at this article from—after Style and Drafting had it, we reinserted the word "unlimited"—and—both of these Sections, 1 and 2, and I don't see it.

**PRESIDENT GRAYBILL:** You're in your wrong book. Mine has the word "unlimited" on line 12 of Section 2. You're in a draft—you're in a previous draft. It's a draft with no cover on it—Order of Business Number 5, it says at the top.

**UNIDENTIFIED DELEGATES:** We don't have it.

**PRESIDENT GRAYBILL:** Would—the Chair would appreciate a show of hands of those who do not have the proper one. (Show of hands) All right, something's wrong. Did you all have the proper one for Number 1?

**DELEGATES:** Yes.

**PRESIDENT GRAYBILL:** May I ask if you all have the proper Order of Business Number 5, Unicameral, that we worked from this morning on Legislative?

**DELEGATES:** Yes.

**PRESIDENT GRAYBILL:** All right, and do you all have it for Executive?

**DELEGATES:** Yes.

**PRESIDENT GRAYBILL:** All right, hearing no objection, the Chair will set aside Constitutional Revision, the General Government one, and we'll start on Legislative. And meantime we'll see the Sergeant-at-Arms and see that everybody gets a proper Order of Business Number 5 on Roman I and II. Let's move to the Legislative Article, the one we just worked on this morning. Is everybody ready?

Mrs. Babcock.

**DELEGATE BABCOCK:** Can we vote on the bicameral and unicameral?

**PRESIDENT GRAYBILL:** In the Legislative, we vote on everything that's in this pamphlet, yes. You vote on both the bicameral and unicameral. You may—what you're voting is—on the bicameral and unicameral, you're voting that—it's the sense of the body this go on the ballot, and this is the way you want the bicameral and this is the way you want the unicameral on the ballot. You don't have to be for one more than the other. You—this is the way you want these particular things to be if that one happens to be adopted by the public. Very well, we'll begin on Legislative Article, Section 1.

Mr. Clerk.

**CLERK HANSON:** "Section 1. Power and structure." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 1 of the unicameral article, Power and structure, vote Aye on the voting machine; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, take the ballot.

Mrs. Reichert.

**DELEGATE REICHERT:** Mr. President, after all my work on a unicameral, I certainly want my vote to register Aye, and it's not working.

**PRESIDENT GRAYBILL:** It isn't working now because it's closed, but if you vote before—

**DELEGATE REICHERT:** I did. I voted.

**PRESIDENT GRAYBILL:** All right, now, don't panic. (Laughter) We'll just—if you're—you know, watch your button when you push it, and if the switch doesn't work, push it two or three times; and if it still doesn't work, stand up and I'll recognize you and we'll get you on. And in this case, Mrs. Reichert, we'll make a special rule, and Mrs. Reichert votes Aye on Section 1. Would you announce the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Absent |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Absent |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Absent |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |

| | |
|---|---|
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 83 delegates voting Aye, 9 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 2.

**CLERK HANSON:** "Section 2. Size." Mr. President.

**PRESIDENT GRAYBILL:** So many delegates as shall be in favor of Section 2, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, I'm wondering about the size as it's listed here. It says, a minimum of 90 and a maximum of 105. I thought that was to be 100. Is that correct?

**PRESIDENT GRAYBILL:** That's correct.

**DELEGATE CHOATE:** Okay.

**PRESIDENT GRAYBILL:** Very well, we'll close the ballot. Please cast the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Nay |
| Artz | Aye |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |

| | |
|---|---|
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 82 delegates voting Aye, 12 voting No.

**PRESIDENT GRAYBILL:** Very well. Ladies and gentlemen, we'll have the pages pass out Section 1. Now, we do not have a hundred, so those of you who happen to have Section 1, please don't accept one from the pages. That's—we've already finished that, but we'll pass it out for you in case you didn't have one. Now, the sergeant tells me that these were put out. Apparently they were put out at some time when they were swept into the baskets along with all of the other things you didn't want, so some of you should have them; and you might look around, because we do not have enough Section 2's. Now, we'll go print some more.

Mr. Hanson.

**DELEGATE ROD HANSON:** I have two, if you're short.

**PRESIDENT GRAYBILL:** Well, just share with your neighbor there.

**DELEGATE ROD HANSON:** They've all got 2.

**PRESIDENT GRAYBILL:** All right, now, the first thing we're going to do is put out Number 1. And if you don't have it, just take one, but if you do have it, please let the page not give it to you.

Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. President, I just rise to say that I don't blame anybody for getting rid of that Number 2.

**PRESIDENT GRAYBILL:** Section 3.

**CLERK HANSON:** "Section 3. Election and terms." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 3, Election and terms, of the Unicameral Article of the Legislative Article, please vote Aye on the voting machines; and so many as are opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot, Mr. Clerk.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |

| | |
|---|---|
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Absent |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Absent |
| Martin | Absent |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Absent |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 79 delegates voting Aye, 11 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 4.

**CLERK HANSON:** "Section 4. Qualifications." Mr. President.

**PRESIDENT GRAYBILL:** So many as wish to vote Aye on Section 4, vote on the voting machine; and those opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** We'll close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |

| | |
|---|---|
| Ask | Absent |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**PRESIDENT GRAYBILL:** Mr. Clerk.

**CLERK HANSON:** Mr. President, 79 voting Aye, 14 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 5.

**CLERK HANSON:** "Section 5—"

**PRESIDENT GRAYBILL:** "Compensation."

**CLERK HANSON:** "—Compensation." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall favor Section 5 on compensation will vote

Aye on the voting machines; so many as opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** The ballot is closed. Please cast the ballot

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 83 voting Aye, 9 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 6.

**CLERK HANSON:** "Section 6. Sessions." Mr. President.

**PRESIDENT GRAYBILL:** Section 6 is the bottom of page 1 and on page 2. So many as shall favor Section 6, vote Aye on the voting machines; and opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** The ballot is closed. Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |

| | |
|---|---|
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**PRESIDENT GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** I see we're voting by sections but not by subsections. In such instances where there are two substantive propositions in the section, where you might be for one and against the other, what does a poor devil do?

**PRESIDENT GRAYBILL:** Mr. Romney, I told you at the beginning of the vote on this that the rules require that we do this by section and not by subsection, and you have to then decide whether you want to go with the—with your vote or not. You have to decide whether you like the whole thing as a whole or not, and then you get to vote.

Mrs. Pemberton.

**DELEGATE PEMBERTON:** Mr. President, I was under the impression that we—this is the way it's to go on the ballot and that we are approving or disapproving of the way it is worded.

**PRESIDENT GRAYBILL:** We're voting on the Legislative Article, and it will go on the ballot as the Style and Drafting Committee finally styles it, and you're approving the text of this material—

**DELEGATE PEMBERTON:** Thank you.

**PRESIDENT GRAYBILL:** —and you can vote for or against it, either way.

Mr. Romney, for what purpose do you rise?

**DELEGATE ROMNEY:** I seek information.

**PRESIDENT GRAYBILL:** Very well.

**DELEGATE ROMNEY:** Would it be possible for me, at this late date, to change my vote on Section 5?

**PRESIDENT GRAYBILL:** No, but you can explain it, if you want to, for the journal.

**DELEGATE ROMNEY:** I will be more careful in the future, I promise. I voted in favor of Section 5, being in favor of the first subsection, whereas I am against the second subsection, so the record will show that's my feeling.

**PRESIDENT GRAYBILL:** Very well. Section 7, Mr. Clerk.

**CLERK HANSON:** Shouldn't we announce the vote?

**PRESIDENT GRAYBILL:** Oh, all right, announce the vote.

**CLERK HANSON:** 76 delegates voting Aye, 18 voting No. Mr. President.

**PRESIDENT GRAYBILL:** All right, Section 7.

**CLERK HANSON:** "Section 7. Vacancies." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 7, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted? Section 7 is in the middle of page 2.

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |

| | |
|---|---|
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 78 delegates voting Aye, 16 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 8.

**CLERK HANSON:** "Section 8. Immunity." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 8, vote Aye on the voting machine; so many as opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |

| | |
|---|---|
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berthelson | Aye |
| Berg | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Absent |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Absent |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 87 delegates voting Aye, 5 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 9.

**CLERK HANSON:** "Section 9. Disqualifications." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 9, please vote Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Absent |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 78 delegates voting Aye, 15 voting No.

**PRESIDENT GRAYBILL:** Section 10.

**CLERK HANSON:** "Section 10. Organization and procedure." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 10, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Absent |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |

| | |
|---|---|
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 81 delegates voting Aye, 11 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 11, on the middle of page 3.

**CLERK HANSON:** "Section 11. Bills. Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 11, which contains six subsections, vote Aye on the voting machines; so many as opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Absent |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |

| | |
|---|---|
| Sparks | Nay |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 69 delegates voting Aye, 23 voting No.

**PRESIDENT GRAYBILL:** Section 12, on page 4.

**CLERK HANSON:** "Section 12. Local and special legislation." Mr. President.

**PRESIDENT GRAYBILL:** So many delegates as shall favor Section 12, vote Aye on the voting machines; so many as opposed, vote Nay. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Close the ballot and cast the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |

| | |
|---|---|
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. Chairman, 89 delegates voting Aye, 5 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 13, on page 4, including four subsections.

**CLERK HANSON:** "Section 13. Impeachment."

**PRESIDENT GRAYBILL:** So many as are in favor of Section 13, vote Aye on the voting machine; and so many as opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot, please.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |

| | |
|---|---|
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 86 delegates voting Aye, 7 voting No.

**PRESIDENT GRAYBILL:** Very well. Graybill votes Aye.

**CLERK HANSON:** 87 voting Aye, 7 voting No.

**PRESIDENT GRAYBILL:** Section 14.

**CLERK HANSON:** "Section 14. Districting and apportionment." Mr. President.

**PRESIDENT GRAYBILL:** Section 14, including three subsections. So many as are in favor, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any other delegates wish to change their votes?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |

| | |
|---|---|
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. Chairman—Mr. President, 79 voting Aye, 16 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 15, at the bottom of page 5.

**CLERK HANSON:** "Section 15. Referendum of unicameral legislature." Mr. President.

**PRESIDENT GRAYBILL:** Section 15 consists of a great many subsections because it includes the Bicameral Article. So many as are in favor of Section 16, vote Aye on the voting machines; and so many as opposed, vote No.

**DELEGATES:** Section 15.

**PRESIDENT GRAYBILL:** —15. I beg your pardon; 15, on the bottom of page 5. Referendum on unicameral legislature. It includes the bicameral alternative in the event the referendum is turned down. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** The ballot is closed.

**DELEGATE ROMNEY:** Mr. Chairman.

**PRESIDENT GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** I didn't punch it hard enough, I guess. I want to vote Aye.

**PRESIDENT GRAYBILL:** Mr. Romney votes Aye.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |

| | |
|---|---|
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Absent |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 75 delegates voting Aye, 19 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 16, on page 9.

**CLERK HANSON:** "Section 16. Prohibited payments." Mr. President.

**PRESIDENT GRAYBILL:** Section 16, on page 9. So many delegates are in favor, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |

| | |
|---|---|
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 90 delegates voting Aye, 5 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 17.

**CLERK HANSON:** "Section 17. Code of ethics." Mr. President.

**PRESIDENT GRAYBILL:** Section 17, on page 9. So many delegates are in favor, vote Aye on the voting machine; and opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot, please.
Mrs. Reichert.

**DELEGATE REICHERT:** Mr. President, Reichert votes Aye.

**PRESIDENT GRAYBILL:** Reichert votes Aye.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Absent |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Absent |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 88 delegates voting Aye, 5 voting No.

**PRESIDENT GRAYBILL:** Very well. Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President, yesterday afternoon we had an hour television program debating the unicameral and bicameral, and I can see now why Mrs. Reichert is failing to press that button properly. She probably was convinced that unicameral wasn't as good as she thought it was. (Laughter)

**DELEGATE REICHERT:** (Inaudible)—if it's not too late.

**PRESIDENT GRAYBILL:** Mrs. Speer.

**DELEGATE SPEER:** I vote Aye. This isn't working.

**PRESIDENT GRAYBILL:** On Section 17?

**DELEGATE SPEER:** Yes.

**PRESIDENT GRAYBILL:** Very well.

**DELEGATE BATES:** Mr. Chairman.

**PRESIDENT GRAYBILL:** The Chair knows that this is difficult for you. It's a little difficult for the clerk, too; and we're just running the tape back so we don't—we have—our only problem is the tape, and we have to work with the tape. And we've sent for the repairman, but bear with us and I think we can get this job done. Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman.

**PRESIDENT GRAYBILL:** For what purpose do you rise?

**DELEGATE BATES:** In voting on Section 1, I voted wrong. I meant to vote No.

**PRESIDENT GRAYBILL:** Very well, on Section 1 of the Legislative Article?

**DELEGATE BATES:** Yes, because it says "one-chamber body", and I'm not for a one-chamber.

**PRESIDENT GRAYBILL:** That's fine, Mrs. Bates. That may show in the journal—or the transcript. Mr. Mahoney.

**DELEGATE MAHONEY:** I might have to confess. Like Mrs. Bates, I made an awful error and I didn't realize at the time. But I did make an error on Section 1, but I don't want any questions on it. I just wanted the body to know I did make an error.

**PRESIDENT GRAYBILL:** Confession is good for the soul. (Laughter) We're now going to start on the Legislative Bicameral Article, after the middle sheet. Mr. Clerk, will you please read Section 1?

**CLERK HANSON:** "Section 1. Power and structure." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 1 of the Bicameral Article, on page 1 behind the manila-colored—or the cream-colored sheet, vote Aye on the voting machines; as many as are opposed, vote No. Has every delegate voted?
(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?
(No response)

**PRESIDENT GRAYBILL:** Very well, the vote is closed.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Absent |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |

| | |
|---|---|
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 83 delegates voting Aye, 10 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 2, Size.

**CLERK HANSON:** "Section 2. Size." Mr. President.

**PRESIDENT GRAYBILL:** So many as are in favor of Section 2, vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, the vote's closed.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Nay |
| Artz | Aye |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |

| | |
|---|---|
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Nay |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Absent |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 69 delegates voting Aye, 25 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 3.

**CLERK HANSON:** "Section 3. Election and terms." Mr. President.

**PRESIDENT GRAYBILL:** So many delegates as shall be in favor of Section 3, vote Aye; and opposed, vote No. Has every delegate voted?
(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?
(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |

| | |
|---|---|
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Absent |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 87 delegates voting Aye, 6 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 4.

**CLERK HANSON:** "Section 4. Qualifications." Mr. President.

**PRESIDENT GRAYBILL:** So many delegates are in favor of Section 4, vote Aye on the voting machines; and opposed, vote No. Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Have all delegates voted?

(No response)

**PRESIDENT GRAYBILL:** We'll cast the ballot.

Mr. Champoux.

**DELEGATE CHAMPOUX:** I'd like to record that I made a mistake. I want to vote No on that, please. Sorry.

**PRESIDENT GRAYBILL:** Champoux votes No.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Absent |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Absent |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Aye |

| | |
|---|---|
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 72 delegates voting Aye, 20 voting No.

**PRESIDENT GRAYBILL:** Very well. Now, ladies and gentlemen, we have gotten enough copies of the Section—or of the Constitutional Revision Article printed, and we are going to have it passed among you by the pages. I think we have enough for everybody on this, so there isn't any problem. If the pages care to pass that out now, that will be fine. That's what's coming around. We'll do that after we finish Legislative. Very well, Section 5.

**CLERK HANSON:** "Section 5. Compensation." Mr. President.

**PRESIDENT GRAYBILL:** Section 5, consisting of two subsections. So many as are in favor, vote Aye on the voting machine; opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot. Mr. Clerk, Graybill votes Aye.

**DELEGATE BABCOCK:** Babcock votes Aye.

**PRESIDENT GRAYBILL:** Babcock votes Aye.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Absent |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Absent |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |

| | |
|---|---|
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Absent |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 81 delegates voting Aye, 10 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 6, on page 2.

**CLERK HANSON:** "Section 6. Sessions." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall favor Section 6, vote Aye on the voting machines; and opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |

| | |
|---|---|
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 74 delegates voting Aye, 17 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 7.

**CLERK HANSON:** "Section 7. Vacancies." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall favor Section 7, Vacancies, on page 2, vote Aye on the voting machines; and opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Absent |
| Blaylock | Nay |
| Blend | Absent |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |

| | |
|---|---|
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Absent |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Absent |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Absent |
| Wilson | Absent |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 76 voting Aye, 13 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 8.

**CLERK HANSON:** "Section 8. Immunity." Mr. President

**PRESIDENT GRAYBILL:** So many as are in favor of Section 8, vote Aye; so many as opposed, vote No. Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Absent |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |

| | |
|---|---|
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 89 delegates voting Aye, 4 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 9.

**CLERK HANSON:** "Section 9. Disqualification." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 9, vote Aye; and opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Absent |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |

| | |
|---|---|
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Absent |
| Harrington | Absent |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Nay |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. Chairman, 76 voting Aye, 16 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 10, consisting of five subsections.

**CLERK HANSON:** "Section 10. Organization and procedure." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 10, vote Aye; opposed, No. Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** All the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |

| | |
|---|---|
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Absent |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 85 voting Aye, 9 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 11.

**CLERK HANSON:** "Section 11. Bills." Mr. President.

**PRESIDENT GRAYBILL:** Section 11 consists of six subsections, on page 3 and 4. All in favor of Section 11 vote Aye; and opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |

| | |
|---|---|
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 71 voting Aye, 24 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 12.

**CLERK HANSON:** "Section 12. Local and special legislation." Mr. President.

**PRESIDENT GRAYBILL:** As many as are in favor of Section 12, vote Aye; opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 91 delegates voting Aye, 4 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 13.

**CLERK HANSON:** "Section 13. Impeachment." Mr. President.

**PRESIDENT GRAYBILL:** Section 13, with four subsections. So many as are in favor, vote Aye; so many as opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |

| | |
|---|---|
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 90 delegates voting Aye, 6 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 14.

**CLERK HANSON:** "Section 14. Districting and apportionment." Mr. President.

**PRESIDENT GRAYBILL:** Section 14, consisting of three subsections. All in favor, vote Aye on the voting machines; opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |

| | |
|---|---|
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 79 voting Aye, 17 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 15.

**CLERK HANSON:** "Section 15. Prohibited payments." Mr. President.

**PRESIDENT GRAYBILL:** It's on page 6. So many as in favor, vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |

| | |
|---|---|
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 89 voting Aye, 7 voting No.

**PRESIDENT GRAYBILL:** Section 16.

**CLERK HANSON:** "Section 16. Code of ethics." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 16, vote Aye; opposed, vote No. Every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, I think I'd better explain that last vote. I'm not against ethics, I'm just against the bicameral system. (Laughter)

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |

| | |
|---|---|
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Absent |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 90 delegates voting Aye, 4 delegates voting No.

**PRESIDENT GRAYBILL:** Very well. By your vote you have adopted every article of both the unicameral and bicameral section of the Legislative Article, and the Chair will refer it back to Style and Drafting. Now, if the Chair may be permitted an observation, I am really at somewhat of a loss. This is serious business. We do want to record your vote. I'm at a little bit of a loss to know why people don't vote the same on identical sections two times in a row. So you might think about that. I mean, many of you—hardly any of these votes come out the same, even though the sections are identical. There are only a few different sections. So, I don't know what you're trying to do, but some of you are on record on both sides of these issues, which seems to me a little bit inconsistent of you. Now, we'll take up Number II. Very well, does everyone now have their Constitutional Revision Order of Business Number 5, Number II, before them?

(No response)

**PRESIDENT GRAYBILL:** Now, last time we took the vote on Section 1, but—and it was 94 to nothing—but I'll take it over again so that everyone—because some of you may have been confused as to which article you were working from last time. We're talking about the Constitutional Revision Article on General Government; it's numbered Roman II and it's under Order of Business Number 5. Mr. Clerk, Constitutional Revision, Section Number 1.

**CLERK HANSON:** "Section 1. Constitutional convention."

**PRESIDENT GRAYBILL:** Very well, so many as shall be in favor of Section 1, Constitutional Convention, of General Government's Number II, please vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Seven delegates have not voted. Does any delegate wish to vote or change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, we'll cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |

| | |
|---|---|
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Absent |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Absent |
| Romney | Absent |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 90 delegates voting Aye, no delegates voting No.

**PRESIDENT GRAYBILL:** Very well, Section 2.

**CLERK HANSON:** "Section 2. Initiative for Constitutional Convention." Mr. President.

**PRESIDENT GRAYBILL:** Section 2, consisting of two subsections. So many as are in favor, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |

| | |
|---|---|
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Absent |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Absent |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Absent |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 87 delegates voting Aye, 3 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 3.

**CLERK HANSON:** "Section 3. Periodic submission." Mr. President.

**PRESIDENT GRAYBILL:** So many as are in favor of Section 3, vote Aye; and opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Nay |
| Cross | Nay |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 59 delegates voting Aye, 34 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 4.

**CLERK HANSON:** "Section 4. Call of convention." Mr. President.

**PRESIDENT GRAYBILL:** So many delegates as are in favor of Section 4, please vote Aye; opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

| | |
|---|---|
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 89 delegates voting Aye, 5 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 5.

**CLERK HANSON:** "Section 5. Convention expenses." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 5, vote Aye; opposed, No. All the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Absent |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |

| | |
|---|---|
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Absent |

**CLERK HANSON:** Mr. President, 91 delegates voting Aye, 1 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 6.

**CLERK HANSON:** "Section 6. Oath—vacancies." Mr. President.

**PRESIDENT GRAYBILL:** So many delegates as are in favor of Section 6, please vote Aye; opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Absent |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |

| | |
|---|---|
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 93 delegates voting Aye, 2 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 7.

**CLERK HANSON:** "Section 7. Convention duties." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 7, vote Aye; and opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Absent |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Absent |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |

| | |
|---|---|
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Absent |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 89 delegates voting Aye, 2 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 8.

**CLERK HANSON:** "Section 8. Amendment by legislative referendum." Mr. President.

**PRESIDENT GRAYBILL:** So many as are in favor of Section 8, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Absent |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |

| | |
|---|---|
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 92 delegates voting Aye, 2 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 9.

**CLERK HANSON:** "Section 9. Amendment by initiative."

**PRESIDENT GRAYBILL:** So many as are in favor of Section 9, vote Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |

| | |
|---|---|
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Absent |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 87 delegates voting Aye, 7 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 10.

**CLERK HANSON:** "Section 10. Petition signers." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 10, vote Aye; as many as opposed, vote No. Has every delegate voted?
(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?
(No response)

**PRESIDENT GRAYBILL:** Close the ballot.

**DELEGATE ARONOW:** Aronow votes Aye.

**PRESIDENT GRAYBILL:** Mr. Aronow votes Aye.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |

| | |
|---|---|
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 94 delegates voting Aye, no delegates voting No.

**PRESIDENT GRAYBILL:** Very well, Section 11.

**CLERK HANSON:** "Section 11. Submission." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 11, vote Aye; and so many as shall be opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |

| | |
|---|---|
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Absent |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 95 delegates voting Aye; no delegates voting No.

**PRESIDENT GRAYBILL:** Very well. Ladies and gentlemen, by sustaining all of these sections, you have sustained the Constitutional Revision, and the Chair will refer Constitutional Revision Article Number 11 back to Style and Drafting for inclusion in the final Constitution. We'll stand at ease for a minute while we run the tape back.

(Convention at ease)

**PRESIDENT GRAYBILL:** The Convention will be in session.

Mrs. Bates, for what purpose do you rise?

**DELEGATE BATES:** Mr. President, I just wanted to bring something to our attention. In voting here on Section 6, we voted for an oath that we haven't looked at yet. Is this a rubber stamp, then, for the future proposal?

**PRESIDENT GRAYBILL:** Now, Mrs. Bates, I don't understand what you're talking about. Are you talking about the one—General Government?

**DELEGATE BATES:** Yes, it's one that we—

**PRESIDENT GRAYBILL:** May I see a copy, Mr. Clerk? And your point is that Section 6 you haven't looked at? What do you mean?

**DELEGATE BATES:** The oath of office.

**PRESIDENT GRAYBILL:** (Gaveling for order) Will everyone please sit down and be quiet?

**DELEGATE BATES:** As yet, as far as I can recall, we haven't acted on the actual oath that will be provided in this Constitution and—

**PRESIDENT GRAYBILL:** You're talking about Section 6, Oaths and vacancies?

**DELEGATE BATES:** Yes, in Section 2 of this Constitutional Revision; but I just thought maybe it was something that we should be aware of. Thank you.

**PRESIDENT GRAYBILL:** I don't understand you at all, Mrs. Bates. We have voted on Section 6, to my recollection. Now, I'll be glad to pull my book—

**DELEGATE BATES:** Yes, Mr. Chairman, we just voted on it now; but as far as the actual oath that will be included in this Constitution, we haven't acted on it previously as far as I can recall, although I did miss a session yesterday.

**DELEGATE ETCHART:** Mr. Chairman.

**PRESIDENT GRAYBILL:** Mr. Etchart.

**DELEGATE ETCHART:** The oath is part of the General Government Article which will be coming out at the end of the last article.

**PRESIDENT GRAYBILL:** I see. Well, Mrs. Bates, you are absolutely correct. We have voted on an oath that we haven't seen. It will come out of General Government. This Convention took an oath. I think the delegates presumed that the next Convention, if there was one, would take an oath. I see what you mean. I'm—we're not supposed to debate or discuss it. If you have other questions—we've been through this one about three times. I think you're correct—technically correct—I think it's probably unimportant at this time, and you may certainly debate the oath when Mr. Etchart brings the oath in. Okay, now I understand what your point is. Very well, we'll now take up the Executive Article, Order of Business Number 5, Executive, styled Number Roman IV. Everyone should have that. It was put on your desks today.

Very well, Mr. Clerk, Section 1.

**CLERK HANSON:** "Section 1. Officers." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 1 of the Executive Article, being Order of Business Number 5, Executive Number Roman IV, please vote Aye on the voting machine; opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** We'll close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Absent |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhart | Nay |
| Cain | Aye |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Nay |
| Gysler | Nay |

| | |
|---|---|
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 48 voting Aye, 46 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 2.

**CLERK HANSON:** "Section 2. Election." Mr. President.

**PRESIDENT GRAYBILL:** Section 2, consisting of subsections 1 and 2. All those in favor, vote Aye; opposed, vote No.

Mrs. Robinson.

**DELEGATE ROBINSON:** Point of order. On final consideration on Section 1—am I wrong—do we not have to have 50—a majority of the membership of the body, rather than a majority of those present and voting?

**PRESIDENT GRAYBILL:** Just a moment. We'll check. May I have your attention? I'm going to void the existing ballot on Number 2, and we'll come back to that. Just void that one. Mrs. Robinson has raised a point of order which I'm sure is interesting to everybody. And it's Rule 51, on page 23: "On final consideration of articles, the Convention shall finally consider individual articles at Order of Business Number 5, section by section—a majority of elected delegates—by a majority of elected delegates and refer the said articles to Style and Drafting." So, at the moment you have not—you are not going to send Section 1 to Style and Drafting. It's going to be deleted. 48 only having voted Aye.

Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move for a call of the Convention.

**PRESIDENT GRAYBILL:** Very well, a call of the Convention having been moved for, we'll—yes, Mr. Sergeant-at-Arms, we've had a call of the Convention. Will you call in the lobbies and see if we can't get the rest in here? All in favor of a call of the Convention, vote Aye—say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** Very well. Will all those present please vote Aye on the voting machines, so we'll find out where we stand?

**CLERK HANSON:** Mr. Barnard.

**PRESIDENT GRAYBILL:** Mr. Eskildsen.

**CLERK HANSON:** Pemberton, Holland, Dahood.

**PRESIDENT GRAYBILL:** Members of the Convention, you may be interested in—a call of the house having been ordered and voted, we're on, now, Rule 68: "No one shall be permitted to leave the floor of the Convention without permission of the President. The Sergeant-at-Arms will notify all members within the bar of the Convention", which the sergeant is now doing. "The roll of the Convention shall be called and the absentees noted. The Sergeant-at-Arms may be dispatched after absentees. The Convention may proceed to business under a call of the Convention pending the arrival of the absentees."

Mr. Murray, what's your pleasure?

**DELEGATE MURRAY:** Well, my pleasure is to advise the Convention that we have just done a most serious act. Apparently, we want to go back to January 17th and commence committee work again on the Executive Article by indication of our last vote. And I think that we should remind ourselves that we are in a most—probably the most critical stage of our Convention right now. We have, by the rules, required 51 votes to pass things. This means that the delegates should remain in this hall, should pay attention to their voting, and should be careful what they're doing. Now, if they intend to do that, somebody is going to have to get that particular section of the Executive Article back into that committee or do something with it. And I hope they have in mind some good idea as to what they're going to do, because that just simply destroys that committee and this Convention's work to this stage. Now, progress having been made with Delegate Pemberton having returned to the chamber, I move call of the house be dispensed with.

**PRESIDENT GRAYBILL:** Mr. Arbanas, for what purpose do you rise?

**DELEGATE ARBANAS:** I'd like to have a more careful explanation. If we persist in this vote, what does it actually mean? What are the processes we'll follow?

**PRESIDENT GRAYBILL:** Well, at the moment it means that we have no executive officers in the new Constitution.

**DELEGATE ARBANAS:** Yes, but now what do we do about it? That's what my question—does this go back to committee?

**PRESIDENT GRAYBILL:** I'm sure the Executive Committee and others are thinking about that, Mr. Arbanas, right now.

Mr. Murray.

**DELEGATE MURRAY:** Well, Mr. President, if nobody can come up with a better idea, then I would have to move to suspend the rules to put it back into the committee, which again places it in January 17th status.

**DELEGATE SIMON:** Mr. Chairman.

**PRESIDENT GRAYBILL:** Mr. Simon.

**DELEGATE SIMON:** I would like to change my vote.

**PRESIDENT GRAYBILL:** I'm sorry, Mr. Simon, you can't change your vote at this time. The vote was cast.

**DELEGATE SIMON:** The vote is cast?

**PRESIDENT GRAYBILL:** Yes. There's a lot of us might want to change our vote, but it's cast.

**DELEGATE KELLEHER:** Mr. Chairman.

**PRESIDENT GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** I'd like to say I just don't want Mr. Murray's remarks to go with no response. We are a plenipotentiary body, and we can do anything we darned please. And if we want to reconsider this and send it back to committee, that's our power to do so. Our people are going to live with this Constitution for a heck of a long time, presumably, and if it means a few extra hours or a couple extra days to redecide this matter, I see no harm in that.

**PRESIDENT GRAYBILL:** I don't think Mr. Murray meant anything—that we couldn't do that, Mr. Kelleher. The problem is, we have now a serious problem because we have destroyed the Executive Article. And that's fine; we'll certainly work on it.

Mr. Murray—Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. I believe that I was the only member of the Executive Committee who voted for this, and I just want to reiterate the position that I've taken on the floor and that is that—

**PRESIDENT GRAYBILL:** Well, Mr. Martin, I am not interested in arguing the Executive Article now. If anyone has any discussion about the problem we're in, I will certainly be interested in—

**DELEGATE MARTIN:** Well, I think it is of—

**PRESIDENT GRAYBILL:** —but I'm not interested in arguing the Executive Article.

**DELEGATE MARTIN:** It's a policy that I think the Convention should adopt, and that is not to reconsider and reconsider.

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I made a motion that we dispense with the call of the Convention. Has that motion ever been voted on?

**PRESIDENT GRAYBILL:** No, it hasn't. The motion is to dispense with the call of the Convention. Is there other discussion on that motion?
(No response)

**PRESIDENT GRAYBILL:** All in favor of dispensing with the call of the Convention, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** The Ayes have it.
Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move that we suspend our rules for the specific purpose of revoting on Section 1 of the Executive Article.

**PRESIDENT GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** I think that to be out of order. I think he can move to reconsider if he wishes to, but I don't think—question at this time if we should ask for the suspension of the rules. You have a number of issues here that can be used. You can reconsider this vote and get a majority and then revote it, or you can send this back to committee. But I don't see any question of suspending the rules for this.

**DELEGATE MURRAY:** Mr. President, the reason that I make the motion to suspend the rule is so the matter can be handled under this Order of Business. If we do not do so, we have to pass it for the time, go on to Order of Business Number 7 and then move to reconsider. And that's why I make it now, Mr. Mahoney. I think that it should be made now so we can dispose of the matter.

**DELEGATE MAHONEY:** (Inaudible)

**PRESIDENT GRAYBILL:** All right, just a minute. No one has the floor. Will the Convention be in order. Mr. Murray, at this time, the Chair is going to rule your motion to suspend the rules out of order; there being, in the Chair's opinion, other ways of approaching the problem. I'd call the delegates' attention to Rule 66, Motion for Reconsideration: "Any delegate who voted on the prevailing side may move for a reconsideration of any question at the same session day of the Convention, or may give notice for the next day. If the delegate who gave the notice does not make the motion the next day"—and so forth. The Committee on Style also may do it. "A motion to reconsider shall take precedence over all other questions except a motion to fix the time to which to adjourn"—a motion to adjourn, and so forth. "A motion to reconsider shall not be renewed." I've asked the question once of the Rules Committee as to whether or not we can't reconsider at this stage. I see nothing in the rules that prohibits reconsideration at Order of Business Number 5; therefore, a motion to reconsider would be in order. The Chair voted on the prevailing side, and if no one else will do it, I'll make a motion to reconsider.
Mr. Habedank, for what purpose do you rise?

**DELEGATE HABEDANK:** Mr. President, I voted on the prevailing side and I move that we reconsider our action, our vote on that section.

**PRESIDENT GRAYBILL:** Very well.

**DELEGATE HABEDANK:** Mr. President, I thought the motion lost. I did not vote on the prevailing side.

**PRESIDENT GRAYBILL:** Yes, Mr. Habedank, you're out of order.
Mr. Harlow, for what purpose do you rise?

**DELEGATE HARLOW:** First, I was going to ask for a point of order, but it has been cleared up. I want to know who voted—or, that is, what was the prevailing side?

**PRESIDENT GRAYBILL:** The prevailing side was—(gaveling for order)—Mr. Harlow has asked a question which the Chair intends to answer, so everybody take their time here. The motion that the Chair put was to adopt Section 1, and so I would say that the people that voted on the 46 side—that is, No—were the prevailing side. The Chair is going to rule that way. Does anyone care to challenge the Chair? In other words, the No votes were the prevailing side. Anybody that voted Aye can—anybody that voted No can move to reconsider. Now, let's check again, Mr. Habedank.

**DELEGATE HABEDANK:** I voted No.

**PRESIDENT GRAYBILL:** Mr. Habedank, having voted No, you are on the prevailing side. Mr. Habedank, having previously recognized you, I'll recognize you again. What's your purpose?

**DELEGATE HABEDANK:** I move we reconsider the vote on Section 1.

**DELEGATE FELT:** Mr. President.

**PRESIDENT GRAYBILL:** Mr. Felt, you do not have the floor.

**DELEGATE FELT:** I know. I'm seeking it.

**PRESIDENT GRAYBILL:** Yes, I know, Mr. Felt. Mr. Felt, for what purpose do you rise?

**DELEGATE FELT:** The Chair invited the question if anyone wished to challenge the ruling of the Chair, but none—given no opportunity to do so, I'm not—

**PRESIDENT GRAYBILL:** Just a moment, Mr. Felt. We have not proceeded. I'll be happy to give you that opportunity. I do have to think one thing through at a time, Mr. Felt.

Now, Mr. Felt, for what purpose do you rise?

**DELEGATE FELT:** To challenge the ruling of the Chair that the No votes were the prevailing side.

**PRESIDENT GRAYBILL:** Very well.

**DELEGATE FELT:** And I'm not trying to be obstreperous. I think it's a difficult question and it might require just a little more thought by all of us, but the—it would seem to me that no side prevailed—there was no prevailing side—and that no action was taken; and a motion to reconsider would therefore be of some questionable validity. And I would just like to suggest as a possibility, which I'm not sure is available, either that a motion to revert to Section 1 of the Executive Article—

**PRESIDENT GRAYBILL:** Mr. Felt, you're out of order on that. You've challenged the order of the Chair, and we'll take care of that matter.

**DELEGATE FELT:** I was just suggesting that as a possibility.

**PRESIDENT GRAYBILL:** All right, now Rule—

**DELEGATE FELT:** My only point is to challenge the ruling of the Chair.

**PRESIDENT GRAYBILL:** Very well, Mr. Felt, and the Chair will allow your challenge. Rule 75 is the one that you want to look at on challenge of the Chair: "On all appeals from decisions of the Chair, the question shall be, shall the appeal be sustained?"—that is, shall the Chair be—shall Mr. Felt's appeal be sustained? "A favorable vote of a majority of the delegates present and voting shall sustain the appeal. The presiding officer may cast his vote on an appeal from his decision, and he shall have the right to explain his decision." Very well, I shall now explain my decision, and then we'll vote on Mr. Felt's challenge. When I put Section 1 to the body, I put it for adoption. Therefore, those that voted Aye were voting for adoption. It failed of adoption because of the rules; therefore, I've ruled that the prevailing side were people who were trying to keep it from being adopted. That's why I ruled that way. Secondly, I would like to point out that having ruled—that I have to rule one way or the other. We have to find—have someone do it, and then as soon as we have made that ruling, one of us, either Mr. Habedank or someone on the other side, can then make a motion to reconsider. It doesn't seem to me that it makes much difference. If I'd ruled the other way, we would have had someone else make the motion to reconsider, but that's the way I ruled. Now, the issue is, shall Mr. Felt's challenge of the Chair be sustained? All those in favor of sustaining Mr. Felt's—and we'll take a roll call—all those in favor of Mr. Felt's motion challenging the Chair, vote

Aye; and those that wish to sustain the Chair, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, we'll cast the ballot.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Absent |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. President | Nay |

**CLERK HANSON:** Mr. Chairman, 9 delegates voting Aye, 86 voting No.

**PRESIDENT GRAYBILL:** 9 delegates having voted Aye and 86 voting No, the Chair is sustained. And the people that voted—the 46 of you—are the prevailing side and Mr. Habedank's motion is in order. Mr. Habedank's motion is a move to reconsider. Now, the Chair would like to explain at this time to all the delegates that I'm aware this is an important matter for many of you. The Chair is merely going to put these things, and we're going to get a vote. Obviously, we have a vote that upset the applecart. Now the question is whether there are enough people here to sustain that vote. Some people are willing to have it reconsidered. The Chair has to put that reconsideration, and we will put the reconsideration. If we reconsider Section 1, then you can vote on it again; if we don't reconsider it, then we won't vote on it again and we'll have to take it from there. I suppose you want a roll call vote on the reconsideration.

**DELEGATES:** Yes.

**PRESIDENT GRAYBILL:** Very well. Mr. Mahoney, are you up?

**DELEGATE MAHONEY:** (Inaudible)

**PRESIDENT GRAYBILL:** No? Just—all right. Now, the vote—we're going to have a roll call vote. So many as shall be in favor of reconsidering, vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, we'll close the ballot.

Mr. Aasheim, for what purpose do you rise?

**DELEGATE AASHEIM:** For the purpose of information, Mr. President.

**PRESIDENT GRAYBILL:** Very well, state your point.

**DELEGATE AASHEIM:** Will Mr. Murray yield to a question?

**PRESIDENT GRAYBILL:** Mr. Murray, there's a point of information and you've been asked to yield.

**DELEGATE MURRAY:** I yield.

**DELEGATE AASHEIM:** Could we not refer this section to General Orders, rather than back to the committee?

**DELEGATE MURRAY:** No, we're right here on Order of Business Number 5. The President has decided that he wants a reconsideration at this time; we've just voted to do that. My inquiry of the Chair and my motion was to suspend the rules because I disagreed with the President that we should have reconsideration here. He's authorized that motion; we've agreed. Now we'll vote on it. We don't take it out of here again; we leave it right here. If we lose it and we do not get 51 votes, then some appropriate motion will have to be made under Order of Business Number 7 to put it someplace.

**DELEGATE AASHEIM:** One more question.

**PRESIDENT GRAYBILL:** Very well, Mr. Aasheim.

**DELEGATE AASHEIM:** We could then put it to General Orders if we wanted to?

**DELEGATE MURRAY:** On Order of Business Number 7; but you can't do it here.

**PRESIDENT GRAYBILL:** The Chair would only like to correct the inference that the Chair cares. I'm going to vote, but it was not the Chair's idea that we have to do it this way. This way was available without suspending the rules. Someone took the way, and that's why we're doing it.

Mr. Mahoney, for what purpose—

**DELEGATE MAHONEY:** I might think we're on a roll call vote and this is highly irregular to be discussing. I think the President has been right in his decisions all the way, and I think we're on roll call. I believe the only thing you can do is explain your vote.

**PRESIDENT GRAYBILL:** This was a point of information, and that's why we took it that way. It's not a debate of the issue. Will the clerk please announce the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |

| | |
|---|---|
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Nay |

**CLERK HANSON:** Mr. President, 83 delegates voting Aye, 15 voting No.

**PRESIDENT GRAYBILL:** Very well, 83 having voted Aye and 15 No, we will reconsider Section 1 of the Executive branch—Order of Business Number 5, Executive Number Roman IV

Mr. Monroe, for what purpose do you rise?

**DELEGATE MONROE:** Mr. President, I rise to explain my vote.

**PRESIDENT GRAYBILL:** Well, it's too late to explain your vote after the—after it's cast; you have to explain it before we announce it.

**DELEGATE MONROE:** Okay, thank you.

**PRESIDENT GRAYBILL:** Very well, we're ready to vote again on Section 1. Mr. Clerk, Section 1.

**CLERK HANSON:** "Section 1. Officers." Mr. President.

**PRESIDENT GRAYBILL:** Very well, so many as shall be in favor of adopting Section 1, Officers, vote Aye—and so many as shall—and that includes subsections 1, 2 and 3—and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |

| | |
|---|---|
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Nay |

**CLERK HANSON:** Mr. President, 62 delegates voting Aye, 36 voting No.

**PRESIDENT GRAYBILL:** 62 delegates having voted Aye and 36 having voted No, Section 1 of the Executive Article is now adopted.

**DELEGATE MAHONEY:** Mr. President.

**PRESIDENT GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** I'd like to thank Mae Nan Robinson for bringing this to the attention of the delegates; and there's nothing at harm now, it's good. But thank you very much for bringing this to the attention of the delegates.

**PRESIDENT GRAYBILL:** Very well. Very well, we're on Section 2, and there are two subsections.

Mr. Clerk.

**CLERK HANSON:** "Section 2. Election." Mr. President.

**PRESIDENT GRAYBILL:** Section 2. So many as shall be in favor, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, cast the ballot.

Mr. Siderius.

**DELEGATE SIDERIUS:** Mr. Chairman, I guess I didn't push my button quite hard enough. I vote—

**PRESIDENT GRAYBILL:** Very well, Siderius votes Aye.

**DELEGATE SIDERIUS:** I vote Aye. (Laughter)

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Absent |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |

| | |
|---|---|
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 84 delegates voting Aye, 12 voting No.

**PRESIDENT GRAYBILL:** That was right, wasn't it, Mr. Siderius? (Laughter) Very well. Excuse me, Mr. Siderius. (Laughter) Section 3, containing three subsections.

**CLERK HANSON:** "Section 3. Qualifications." Mr. President.

**PRESIDENT GRAYBILL:** Section 3. So many as shall be in favor, vote Aye on the voting machines; opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Absent |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |

| | |
|---|---|
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Absent |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 67 delegates voting Aye, 29 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 4. Section 4 is on page 2; contains four—five subsections.

**CLERK HANSON:** "Section 4. Duties." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 4, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Absent |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Absent |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |

| | |
|---|---|
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Absent |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 84 delegates voting Aye, 11 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 5, containing two articles—two subsections.

**CLERK HANSON:** "Section 5. Compensation." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 5, vote Aye; opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |

| | |
|---|---|
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Absent |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Absent |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 89 delegates voting Aye, 4 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 6, containing two articles—subsections.

**CLERK HANSON:** "Section 6. Vacancy in office." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 6, please vote Aye on the voting machines; and opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |

| | |
|---|---|
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Absent |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 82 delegates voting Aye, 3 voting No.

**JOURNAL CLERK ACHER:** 92.

**CLERK HANSON:** 92 voting Aye, 3 voting No.

**PRESIDENT GRAYBILL:** 92, very well. Section 7.

**CLERK HANSON:** "Section 7. Twenty departments." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 7, vote Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 85 delegates voting Aye, 13 voting No.

**PRESIDENT GRAYBILL:** Ladies and

gentlemen, some of you have requested the pages to send up for certain of these votes. Now, you certainly can have them, but they all have to be separated. They're put together. Rosemary has to record them in the journal. They'll all be available at the clerk's office this afternoon, or I think at the recess—noon recess. It's just about impossible. And if you really want one, you'd better come up yourself and look at it and go back; but it's not possible to send you copies or lend them to you yet till we've recorded them. It's quite a job for the journal to record them all. Very well, Section 8.

**CLERK HANSON:** "Section 8. Appointing power." Mr. President.

**PRESIDENT GRAYBILL:** Section 8 consists of four subsections. All in favor of Section 8, vote Aye on the voting machines; and opposed, No. Has every delegate voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |

| | |
|---|---|
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Absent |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 87 delegates voting Aye, 8 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 9.

**CLERK HANSON:** "Section 9. Budget and messages." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 9, vote Aye on the voting machines; opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Absent |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |

| | |
|---|---|
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. Chairman, 95 delegates voting Aye, 2 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 10, consisting of five subsections.

**CLERK HANSON:** "Section 10. Veto power." Mr. President.

**PRESIDENT GRAYBILL:** So many as are in favor of Section 10, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |

| | |
|---|---|
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. President, 94 delegates voting Aye, 4 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 11.

**CLERK HANSON:** "Section 11. Special session." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 11, vote Aye on the voting machines; and opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Absent |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |

| | |
|---|---|
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 93 delegates voting Aye, 4 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 12.

**CLERK HANSON:** "Section 12. Pardons." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall be in favor of Section 12, vote Aye on the voting machines; and opposed, No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Anyone want to change their vote?

(No response)

**PRESIDENT GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |

| | |
|---|---|
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Absent |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 94 delegates voting Aye, 2 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 13.

**CLERK HANSON:** "Section 13. Militia." Mr. President.

**PRESIDENT GRAYBILL:** Militia consists of two subsections. So many as shall favor it, vote Aye; so many as opposed, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

(No response)

**PRESIDENT GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Nay |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |

| | |
|---|---|
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 83 delegates voting Aye, 12 voting No.

**PRESIDENT GRAYBILL:** Very well, Section 13 is finished. Section 14.

**CLERK HANSON:** "Section 14. Succession."

**PRESIDENT GRAYBILL:** Section 14 consists of eight subsections, on page 6 and 7. So many as shall favor Section 14, vote Aye on the voting machines; opposed, No. Any delegate wish to change his vote?

(No response)

**PRESIDENT GRAYBILL:** All the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |

| | |
|---|---|
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 91 delegates voting Aye, 4 voting No.

**PRESIDENT GRAYBILL:** Very well. Section 15, consisting of three subsections.

**CLERK HANSON:** "Section 15. Information for Governor." Mr. President.

**PRESIDENT GRAYBILL:** So many as shall favor Section 15, vote Aye; and so many shall oppose, vote No. Have all the delegates voted?

(No response)

**PRESIDENT GRAYBILL:** Any delegate want to change his vote?

Mrs. Speer.

**DELEGATE SPEER:** Mr. President—I regret that my attention was diverted on that Section 3. I want—

**PRESIDENT GRAYBILL:** For what purpose do you rise, Mrs. Speer?

**DELEGATE SPEER:** To explain my vote, Mr. President.

**PRESIDENT GRAYBILL:** Very well, explain it.

**DELEGATE SPEER:** Oh, thank you. I regret that I was diverted when I was voting on Section 3. I wish there to be a record that I am opposed—that I wanted to vote Nay on Section 3, consistent with my original vote.

**PRESIDENT GRAYBILL:** Mrs. Speer, I think you're talking about basically Section 3, not subsection 3.

**DELEGATE SPEER:** Section 3, so—

**PRESIDENT GRAYBILL:** All right. Well, the record may show—the transcript will show your objection, but you're not really explaining your vote, because you have to do that before it's closed. I've closed the vote on Section 15. Will the clerk please take the vote on 15.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Absent |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |

| | |
|---|---|
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. President | Aye |

**CLERK HANSON:** Mr. President, 92 delegates voting Aye, 3 voting No.

**PRESIDENT GRAYBILL:** Members of the body, you have sustained the sections of the Executive Article, and the Chair will rerefer it to Style and Drafting for inclusion in the final—

Oh, Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, as a point of information, I know—I think Miss Speer—this—and I don't have any objection, but I think it would be better in the future if they would wait until after the roll call is completed, and then it will show definitely what section—as we had a subsection 3 in this—and I sure hope that maybe it would show—afterwards it would be better.

**PRESIDENT GRAYBILL:** Right. Well, first of all, the Chair will refer this back to Style and Drafting. Now, secondly, the Chair would like to say it's been a little bit of a rough morning, but at least you begin to see that when you adopt it, it sometimes can get tough, too. And I would like to suggest to you all that I think perhaps some of us didn't pay enough attention beforehand. If you'll read over these when they come and mark in the margins the ones that you intend to vote against, then we'll go along much more smoothly and there won't be any problems. I realize it's difficult to follow and read all of this, but I think you can appreciate that it would be very difficult if we read everything in full, too, and took a lot of time. So why don't you read it over and mark the ones that you want to be careful on, and then the rest of them you can vote straight through on. And the Chair does let you explain your vote if you get up before the vote is shut off. And then we'll hold it open while you explain it, but if—once the vote is cast, we can't back off of it. And then the Chair will let you do a second thing—namely, we'll let you explain it, so that the transcript shows what you meant. Very well.

Mr. Murray.

**DELEGATE MURRAY:** Mr. President, just one remark before I make my motion. Most of us don't have any difficulty staying on the floor during this Order of Business, and I appreciate the fact that you do stay. If you do leave the floor, I would appreciate it if you'd let somebody know where you are so we can find you, because sometimes, as you can see, these things get suddenly very critical and without knowing where you are, it really slows us down, and I thank you for your consideration this morning. I hope that my remarks did not mean to indicate that I was lobbying one side or the other on that particular issue, because I was not. I just wanted you to realize the serious ramifications of the action which you took and that this is no stage at which to play. Now, Mr. President, I move that we advance to Order of Business Number 10.

**PRESIDENT GRAYBILL:** Very well, the motion is to advance to Order of Business Number 10. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** Mr. Clerk.

**CLERK HANSON:** "March 10, 1972. The following committee proposals are now on General Orders: Education, Public Health, Local Government, General Government, Style and Drafting Number 5, Style and Drafting Number 6." Mr. President.

**PRESIDENT GRAYBILL:** So the body may know the Chair's intentions, it is the intention of the Chair to take up Education at this time. Mr. Champoux has a short opening statement. We'll take that before lunch, and we'll be ready to debate after lunch.

Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

**PRESIDENT GRAYBILL:** All in favor of resolving this Convention into Committee of the Whole, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** The Ayes have it, and so ordered.

(Convention resolved into Committee of the Whole—Mr. Graybill in Chair)

**CHAIRMAN GRAYBILL:** You have before you the brightly colored orange folder on Education, Number 10. The Chair will recognize Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates, at this time I'd like to stand and introduce the Education Proposal. Before I do, however, in compliance with the rules, I would like to state my special interest in this case. I am a history and political science professor at Flathead Valley Community College in Kalispell. I'm also the Chairman of the Social Science Division there. I think if you read over the article, you will find in no instance do we have any special favor cast for the community colleges. I also would like to state, at this time, that there were other members of the board from other levels of education—long experience as well as board members. Also, I want to indicate that we have received widespread support for this proposal from the State Superintendent of Public Instruction and from the MEA, which represents the lower educational support level. Also, at this time, I'd like to make some corrections in the proposal. If you would go to Section 10, please, on page—well, let's do it in the front—page 6, yes. There were some things left out. If you go to line 12, it should read "after the duties of"—would you please put in "this board and of"—line 12, page 6, after "the duties of", it should read: "this board and of the Superintendent of Public Instruction". If you go to Section 5 on page 4, line 25—Section 5, page 4, line 25. After "secondary schools", we should knock out the "s"—the plural "schools", make it singular, and add "districts"—"secondary school districts". The word to add is "districts". The word "districts" is plural. Now, as we go through the different sections of the proposal, on Section Number 4, Mr. Barnard will come in with an amendment. That will be brought to the Chair, and it is simply a way to correct Section 4 so that it comes into—excuse me, Section 3. If you look at Section 3, on page 4, it concerns the public school fund inviolate. Now, the last section of that is in violation with what we did under Revenue and Finance last Saturday in terms of investments. There will be an amendment from Mr. Barnard to correct this. Education occupies a place of cardinal importance in the public realm. The educational system is charged with the task of shaping and cultivating the mind of each succeeding generation and with developing the capacities for cultural and technical advancement of society. State and local governments devote a far larger share of their financial resources to the support of education than to any other single public activity. Because of this overriding importance of education, the committee recognizes the awesome task of providing the appropriate constitutional provisions necessary to protect and nurture the public educational system. Each aspect of existing and proposed constitutional language was thoroughly and deeply reflected upon by the committee in light of present and future needs. Fundamental to the committee's considerations were the twin goals of protecting the integrity of a quality educational system and allowing for flexibility to meet changes as yet unknown but which will certainly occur in future developments in the field of learning. These were our primary objectives—very difficult ones, I might say, to adhere to. In light of these aims, the committee has preserved those provisions in the existing Constitution which have proven worth and which pose no hindrance to potential developments. On the other hand, the committee has made revisions in those places where it saw a definite need for constitutional improvement. Some of these changes have to do with basic aims of the educational system; others are concerned with structural or administrative adaptations to changing conditions in education. The most significant revisions are a clear statement of educational goals of the state, a mandate for the support of education allowing increased financial flexibility—and this was an extremely difficult one in light of the Serrano case, as we noted when we took up Revenue and Finance—the deletion of antiquated age and school term restrictions, and a revised administrative structure for both the public school system and for higher education. The committee views these proposed changes as vital to the quality and efficiency of education in Montana. The proposed article provides appropriate guarantees to the viability of the public school system, while leaving the way open to future transformations in the educational process. Individual members of the committee will be taking up sections. President Graybill has a list of who is assigned. At the end of this statement, I would just simply like to say that as we go through these, let's think of the present generation of young Montanans in our public schools and all to come. Thank you.

**CHAIRMAN GRAYBILL:** Thank you, Mr. Champoux.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I move we recess until 1 o'clock this day.

**CHAIRMAN GRAYBILL:** The motion is to recess until 1 o'clock this day. All in favor, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Committee recessed at 11:55 a.m.—reconvened at 1:12 p.m.)

**CHAIRMAN GRAYBILL:** The Committee will be in order. Mr. Clerk, will you read the title on Section 1 of the Education Article.

**CLERK HANSON:** "Montana Constitutional Convention, Education and Public Lands Committee Proposal Number 10, reported February 22, 1972. Champoux, Chairman; Noble, Vice-Chairman. Be it proposed by the Education and Public Lands Committee that there be a new article on education to read as follows: 'Section 1. Educational goals and duties of the state. It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person. Equality of educational opportunity shall be guaranteed to each person of the state.'" Mr. Chairman, Section 1.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. Before I make the motion on this section, I would like to make two minor corrections. The committee has consented to these corrections. We are going to subsection—Section 1 into subsection 1 and subsection 2 and—at the paragraphs.

**CHAIRMAN GRAYBILL:** Very well. The motion is that on line 8, we put a sub. 1, and on line 13, we put a sub. 2. Is that correct?

**DELEGATE HARBAUGH:** That's correct.

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 1, subsection 1, of the Education and Public Lands Proposal, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** We in Montana are standing on the threshold of a great opportunity in the area of education. Mr. Champoux, in his opening remarks before lunch, mentioned some of the implications of this. But the fact that the convening of our Montana Constitutional Convention coincides with a time in which there are tremendous changes taking place in the area of education and in the methods of financing education put us in a very unique position. We in Montana are in a position of being on the cutting edge of a new frontier, not only in terms of philosophy of education, but in terms of the method of financing education. And it was in the full awareness of this unique situation that the committee undertook to draft these articles on education and public lands. Section 1 of the Education Article combines the present sections 1, 6 and 7 of the Constitution. The mandate of the present Section 1 and 6, which establishes a system of free common schools and provides for their funding, is included in subsection 2 of this article. The committee has omitted the age references which were included in Section 7 of the present Constitution, feeling that these things were better left to statutory detail and that their inclusion might stifle the development of the educational enterprise. In subsection 1 we have a broad statement of the goal of education in our state. And that goal, as it is stated, is to establish a system of education which will develop the full educational potential of each person. Now, this is something new, but the committee intends that this be taken in much the same respect as some of the provisions which we included and adopted in our Bill of Rights section yesterday—that really, just as we were in the area of political theory there, here we are also in the area of educational theory. And so we're setting forth a goal. Now, the committee realizes that economic resources of the state limit this goal, and yet it's our belief that it's very important to set forth a goal for education and that the development of our human resources to the fullest possible extent ought to be a primary goal of the state's educational enterprise. The inclusion of this kind of statement in a constitution is not new. The Illinois Constitution contains a very similar statement, and I'd like to read one line of that. It says, "A fundamental goal of the people of the state is the educational development of all persons to the limit of their capacity." The Constitution of Puerto Rico also contains a similar statement. It says, and I quote: "Every person has a right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom." We've also included in subsection 1 a statement guaranteeing equality of educational opportunity within this stated goal. Now, what does this mean? Well, basically, we are taking a stand which is in line with the more recent interpretations of the courts of this land, but it even reaches back further than that. And I'd like to read to you a quotation from Brown versus the Board of Education decision written in 1954 by the United States Supreme Court. In that decision, nearly 20 years ago, the Supreme Court said, and I quote: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." And, of course, recent court decisions have affirmed this position. The committee recognizes that there is a corollary between the doctrine of equal protection under the law and the fundamental right to equality of educational opportunity. Now, does this statement set forth a mandate that opens the door to a welter of demands for making education absolutely equal for every person at every level? Obviously, it does not. The guarantee here is limited, as are all constitutional guarantees, by other factors and freedoms. No right is absolute, and it would be an absurd construction to interpret this guarantee as an absolute guarantee. One of the concrete limitations on this guarantee would be the ability of the state to finance a system of education which guarantees equality; and where the state can show a compelling cause—compelling state interest, such as the preservation of the economic welfare of the state, this would be a limiting factor imposed upon this guarantee. But the committee does wish to take the position that equality of educational opportunity is a fundamental right of all. And the time is long past when the state can afford to promote one standard of education for those who are members of one geographical area or economic or cultural group and a different standard for those who are members of some other geographical area or economic or cultural group within the borders of this state. Mr. President, I urge the adoption of Section 1, subsection 1.

**CHAIRMAN GRAYBILL:** Mrs. Eck, I understand you want to have an amendment. At this point, it looks to me like your amendment goes to the first section, doesn't it?

**DELEGATE ECK:** Yes, it does, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. May we read your amendment?

**DELEGATE ECK:** Do you want me to read it, or the clerk?

**CHAIRMAN GRAYBILL:** No, the clerk will read it.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 1, page 3, between line 12 and line 13, of the Education and Public Land Majority Proposal, by adding a new paragraph—quote: 'The state recognizes the distinct and unique cultural heritage of the American Indians and is committed to the preservation of their cultural integrity.' Signed: Eck."

**CHAIRMAN GRAYBILL:** Very well. The Chair will allow an amendment of Mrs. Eck to add, at line 12, the sentence that you all have before you from her concerning Indian cultural heritage.

Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman and delegates. During one of our very early hearings in the Bill of Rights Committee, there appeared before us two young Indian students representing student groups of the Fort Peck Reservation. They came asking what we could do, or what the Convention could do, to assure them that they would have the opportunity—and their schools—to study their own culture, perhaps their own language, and to develop a real feeling of pride in themselves for their own heritage and culture, and also a hope that other students all over Montana would recognize the importance and the real dignity of American Indians in the life of Montana.

After that time, our committee, as well as the Education Committee, were visited by a large number of Indians coming with pretty much the same plea. We considered substituting a special article in the Constitution for Article Number II which we have now, which was military reservations. But after a good deal of discussion and talking with Indians and their representatives, it appears that the area that they are most concerned about is that of education. And after consultation with members of the Education Committee, we agreed that we would like to present this amendment to the Education Article. Thank you.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. As some of you know, I've done a great deal of work with Indians. I think this is possibly the only place that this will appear or that anything about Indians is going to appear in the Constitution. They're a responsible segment of our society, and this should be included, so far as I'm concerned. They care a great deal about it, and they're entitled to have it in here. And my only problem is whether or not this belongs in this particular spot. And if Mrs. Eck would not object and if it does pass, I would consider relocating it somewhere in the Education Article—but that's beside the point. They are entitled to have something in, and this is the thing they care most about, some preservation of their own culture.

**CHAIRMAN GRAYBILL:** Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman. I rise in support of this motion. Now, the "red cowboys" from down on the Little Big Horn feel that the primary step in being an integral part of our social and economic competition in Montana is education. And I agree with this. I've lived in the area with the Indians all my life. I try to understand how they feel about it. They do feel very strongly that education is a basic necessity. If this isn't the proper place for it, I really don't know where. I would very much like to see it in this article. Thank you very much.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. Maybe you all feel like this already. I support this. The only thing that motivates a person, I believe, more than any other thing, for good is the self-image. That would also go for ill as well. And the one thing that any minority group needs—this has been true in all the development of black history in the recent few years of our country, where it has been for good development, and the same thing will hold true for the red man—is this self-image, which has been, in a sense, stomped in the dust. And now we must help him return to the kind of self-image that will give him the proper motivation not only to be an Indian, but to be an American. And I think this little section will help more than any other one thing we have done or probably will do in the writing of this Constitution toward that end.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates. I rise in support of this amendment. I perhaps should state my special interests here. I don't have any Indian blood. I am not an Indian, but I was once made an Indian chief. They called me Chief Little Duck. (Laughter) As I left the powwow that day, though, I think I lost it all when one Indian said to another, "It'll never get off the ground." (Laughter) Well, now that I have your attention, these Indians have come before the Education Committee, the Revenue and Finance Committee, the Bill of Rights Committee. Each time, what have they been told? Oh, that belongs—if they come before the Education Committee, they're told that belongs before the Bill of Rights Committee; if they come before the Bill of Rights Committee, they're told that belongs to the Education Committee. And they're sick of it. In other words, this has been a cop-out, and they know it. What we've been doing, then, is pushing them back and forth between the committees in an attempt to get rid of them, and they know it. Robert Gopher—a beautiful name, isn't it?—came before the Finance Committee, I believe it was. Eventually, he came before the Education Committee. And he asked for money for powwows. And some of the people laughed at him. They said, "What's he doing? He's foolish. What's he up here looking for money for powwows for?" Ladies and gentlemen, a powwow is an Indian educational endeavor. That's where they teach their culture. So he knew what he was about. Now, the first time—day I came to this assembly, I looked around and wondered where were—why there were no Indians here as delegates. Later, as I left that door, I saw four Indian students—young college students from the University of Montana—standing out there against the wall. And I thought to myself, how ironic. Here they are, typically, standing outside the door while the white man makes all the decisions for them inside. Isn't it also ironic to see here today a Frenchman from Boston, without any Indian blood, standing at the Montana Constitutional Convention pleading for the Indians, to preserve their cultural integrity? We like to think of ourselves as a great melting pot where everyone becomes a—quote—"typical American", a homogenized society. We are, in fact, a heterogeneous country, a mixing bowl, made up of a colorful patch full of people with different cultural backgrounds. And each group has contributed and woven into the pattern of American customs from their respective homelands. These people are good Americans, but the emotional tie still remains; the identification with the countries of their origin. The argument has been made that it is not possible to single out one ethnic group as a special group. For our Indian people, it is impossible not to mention them as a special group. The State of Montana is composed of the sovereign State of Montana and five autonomous self-governing Indian nations whose people have a dual citizenship. Every other ethnic group in this country has a country of origin to relate to in their pride of heritage, and we have learned in our schools about their countries. All of us have taken Greek history, Roman history, English history, French history, and so forth. Why not Indian history? The Irish have a national day. Try to deny the Irish in this country or in Butte (Laughter) the celebration of that national day. I hope I can be there next Friday to celebrate it with them. (Laughter) We'd have a revolution on our hands. Why not a Chief Charlo Day, Chief Joseph, Chief Hungry Horse, and so forth? What is the country of origin for our American Indians? It is America. What have the average Americans learned in our schools about our American people? Very little, if not nothing. How many delegates sitting in this assembly could answer these questions? Who were the Indians of the Iroquois nation? Which Indians belonged to the five civilized tribes? Now, those are easy questions. They're eastern questions, but they're easy ones. Which—what happened to them? How about the native tribes? How many of us here can name the native tribes of Montana and tell me about their history and native cultures? We've all heard of George Kaplan, the great painter. Some of his works are to be found around this very Capitol. How many have heard this statement by George Kaplan about the Montana Indians? And I quote: "I love a people who are honest without laws, who have no jails and no poorhouses. I love a people who keep the commandments without ever having read them or heard them preached from the pulpit." Are we to tell the Indian people that their history has no place in our schools? Are we to tell them—the Indian people that their ways, their governments were wrong and that they must accept ours, because ours are better? Or will we help them to retain their ethnic identity and make their adaptation as Americans? If there is ever to be a solution to the Indian problem in this country, it will only come about when our educational system provides the knowledge which is needed to understand. And I agree here with Mr. Harper—Reverend Harper wholeheartedly. It will only come when our educational system provides the knowledge which is needed to understand and respect the cultural difference between us and the state helps to preserve and protect their cultural integrity. This is a matter of pride. All of us are proud of our heritage, whether we be English, Irish, Jewish, or whatever. We are proud because we know about our history, our culture and our integrity—our heritage. Are we now to continue to deny this to these, the first citizens of the State of Montana? Ladies and gentlemen, the Montana Indians are still waiting outside the door. Are you going to answer them?

**CHAIRMAN GRAYBILL:** Mr. Anderson.

**DELEGATE OSCAR ANDERSON:** I rise in support of this amendment. My grandchildren have an Indian heritage. I am most proud of this heritage that they have. As a third-generation Montanan and American, I think it would be more fitting if the Indians were here to recognize our culture. I support the amendment.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. As a first-generation Montanan, a second-generation American, I am very sorry that there are not more of the Indian people here to hear Rick Champoux's fine speech. Earl Barlow is sitting here, and I'm glad that he is here. But I think from—all the way from the Kootenai to the Powder River, every one of us are anxious to see something put in. I hate to see this put in as an amendment. I agree with Mr. Schiltz. I thought it was to be a separate article, but I wholly support the thinking here. And if we're to develop, as this section says, the full educational potential of each person and to recognize the Indian heritage and dignity, I hope that as Torrey and I support this—and we very seldom are on the same side of anything—but I hope this signifies unanimous support for this amendment.

**CHAIRMAN GRAYBILL:** Does anyone rise in opposition to this amendment?

Mr. Wilson.

**DELEGATE WILSON:** Mr. President. I have lived among the Indians practically all of my life. I've had property on Indian reservations. I have many Indian friends. And I have seen the Indian heritage, at one time which was very prominent, go downhill from the participation of white people trying to give them and give them and give them. And you can never give anybody enough to satisfy them. I have many, many Indian friends that I think are as equal to the white person as anybody in this room, but I think they have been exploited. They have been provided for many years with equal educational opportunities. Then, what happened? They go back to their reservation for the simple reason that Uncle Sam provides a shed over them, and they don't go out and institute their initiative. These people want equal educational opportunity. They want to be recognized just the same as you and I do, as equals, and not being set aside. I have a thinking—feeling that this tends to set them aside as different from us, and I don't think they are. I think they're Americans, and I think that they need—needs to be emphasized that they do have the same educational opportunity as anyone else. And if they want to preserve their heritages and their cultures, more power to them. Each one of the races wants to preserve this, but to set them aside in the Constitution as being different, this I can't quite follow the reasoning of. And I don't think this is what the Indian people want. They want to be equal. Now, there is a movement on to teach their language in the schools. In my opinion, this is one way of keeping them in the back door. They have to learn our ways. The young people want to learn our ways, and if they pursue the equal educational facilities and become as well educated, which many of them are, they certainly are just as free to be a constitutional delegate, be a governor, a senator, representative, or hold any other office. All they have to do is cast aside the blanket that we, the white people, have thrown over them and take advantage of their education. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Do you have an amendment here you want read?

**DELEGATE HARBAUGH:** I have an amendment to the amendment.

**CHAIRMAN GRAYBILL:** Very well. I'll read it, and then you may speak on it. If you'll take Mrs. Eck's amendment before you, on the third line, after the word "committed", Mr. Harbaugh wants an amendment that adds "in its educational goals"—"in its educational goals". So that the sentence would read: "The state recognizes the distinct and unique cultural heritage of the American Indians and is committed, in its educational goals, to the preservation of their cultural integrity."

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I hope this is in accord with the intent of the persons who made the amendment. In speaking on the amendment itself, I also would speak in favor of the amendment. I think what Mr. Champoux said is correct, that the Indian people felt—who came to testify before our committees—that they were getting the runaround, that they were getting sent back and forth between one committee and another. And I think it is important, perhaps, to have something like this in here even though, in my interpretation of subsection 1, by granting equal opportunity—when I think of equal opportunity and when I interpret that phrase, to me it means that we recognize the distinctiveness of various groups within our society. And I would have to take very serious issue with Mr. Wilson on this particular thing. I have lived for almost 7 years on the Fort Peck Reservation at Poplar, which is the tribal headquarters for the Sioux and Assiniboine Tribes; and make no mistake, the Indian people are different from us "Wasituse" as they call us. There is a difference. And the fact that our culture for many, many years has failed to recognize the cultural differences has led to some very deep misunderstandings about how we ought to relate ourselves and our society to the Indian people. I'm very much in accord with the idea that the Indian culture ought to be upheld and that it ought to be protected as over against the dominant society. While I feel that, really, this is the intention of the Education Committee's report in setting forth equal educational opportunity, I do not resist the amendment here which makes this specific, and I would speak in favor of it.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Harbaugh's additional amendment to add the phrase "in its educational goals" to Mrs. Eck's amendment.

Mr. Hanson.

**DELEGATE ROBERT HANSON:** Mr. President. I would also like to rise in support of this amendment with Gene Harbaugh's addition to it. I think I have been quoted quite a bit—or it has been—gotten in—it has been in the paper about the Indians, and I would just like to say that I am in—very much in accord with this. And having lived on the reservation over in western Montana for somewhat over 59 years, I think I know some of the problems. And I think that in the last few years, through better education, we're finding many changes that are coming about that are much better. And we considered these things in the Bill of Rights, and I think that we should adopt this amendment.

**CHAIRMAN GRAYBILL:** The issue is on Mr. Harbaugh's amendment.

Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman. I would just like to say that at the University of Montana—in the Department of Indian Affairs, for the last couple of years, they have been in the process of preparing books for Indian children. And they have coordinated—this is not only the Department of Indian Affairs, it's the Art Department, Religious Studies, and Education—and this is a coordinated effort to prepare these books. I've seen two of them, and they are really extraordinary. And I'd like to say that this amendment would certainly assure that this—these books and that continuing—that more books like this will be used. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman. I rise in support of the Harbaugh amendment and the intent of including a phrase on Indian cultures in this particular section. In the Bill of Rights Committee, in our rough draft, we suggested giving recognition to the Indians by, in the Preamble, putting in "the spirit of our Creator". We felt that the natives of this state—this great land had lived for thousands of years in a special relationship with their environment, with their mountains, with their wildlife, and they had a special relationship with the spirit of their Creator. It was felt by many that this would be unpopular, so we did remove it and it's no longer in the Preamble. I feel that we had many opportunities to hear from many different peoples, and the Indian people did come before our committee and say they wanted this particular provision. Delegate Wilson did not come before this committee, and no one came before the committee saying the Indian people did not want such a provision and such recognition. I don't own a big ranch in eastern Montana, but I have been close to Indian reservations. I think that they want this. I think they have a deep pride which has been crushed. And as a political matter, I think it would be very good for this Convention to put this particular provision in there now, to encourage working within the system and neutralize the red power, young militants in the reservations who want to change Custer's massacre to Sitting Bull's victory. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. I rise in support of the amendment. I want to mention that not long ago, the *Christian Science Monitor* featured an article on our Constitutional Convention. They mentioned very few issues, but they spent the major portion of that article on the Indian situation in this state. They were speculating whether Indians would be mentioned in our Constitution. I firmly support this amendment, and I hope we will almost have unanimity.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. I support the amendment to the amendment, and the amendment. Through the years, we have given the Indians a great many things that didn't prove to be too good for the Indians. We gave them treaties which we later broke. We gave them discrimination, in the guise of such great statements as "the only good Indian is a dead Indian". We gave them social diseases. We gave them smallpox-infected blankets so we could reduce their surplus population. We gave them alcohol. We gave them a religion which we didn't live up to ourselves and we gave them massacres, such as at Washita and at Wounded Knee. Now, the Indians have appeared before our committees at this Convention and they have asked for these—or this inclusion in our Constitution. And I think—I certainly agree with Mr. Harbaugh. The Indians in Montana are different than any other group that came in here. They were here first; they owned it; and we took it all from them. And I think this is the least we can do.

**CHAIRMAN GRAYBILL:** Now, the Chair would like to point out that you can all get on the record on this when we vote. But if you have to make a speech, stand up.

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I rise in support of the amendment and of the original motion. I should point out a special interest. My law partner, Jean Turnage, and I are counsel for the Confederated Salish and Kootenai Tribes of the Flathead Reservation. However, I speak not as their counsel, but as their friend. Michelle Robinson will understand when I urge to this Convention that it would be a serious error of omission if we failed to include specific recognition of the cultural heritage of our American Indians. And I strongly support the motion.

**CHAIRMAN GRAYBILL:** Mrs. Pemberton.

**DELEGATE PEMBERTON:** Thank you very much. I don't speak very often, but when I do, I'm really sincere about it. Three years ago, I was General Chairman of a National Presswomen's Convention in Billings, Montana. At this time, one of the greatest things we did was to introduce our women of the press across the whole United States to two of the great Indian tribes in the State of Montana. And we were able, through other friends, to take them to Crow Agency and to Custer's Battlefield. I don't believe it either—occurred to either of the two delegates from District Number 1, Torrey Johnson and myself, that we were set apart from anyone else within our area. And I know that our friends on both of these reservations would expect us to be representing them and supporting this amendment, which I do wholeheartedly. They didn't approach us. They didn't approach me in any way. They just took it for granted that I would be part of their own delegation. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Just one brief point, sir, if I may. Mr. Harbaugh, when you use the word "goals", do you intend that to mean for the future? There can be that connotation. I would suggest perhaps that we use the word "endeavors", if it would be all right with you, sir. Thank you.

**DELEGATE HARBAUGH:** Mr. Chairman, may I respond?

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** I used the word "goals" because I think that this ties the statement in with the goals which are set forth in subsection 1. And since this is going to be included in the Education Article, it would seem to me to be appropriate to use the word "goals" and to relate back to the goals which are mentioned—the broad goals for education—in subsection 1.

**CHAIRMAN GRAYBILL:** Very well. The issue—

Mr. Wilson, do you want to speak on the amendment?

**DELEGATE WILSON:** I just wanted to make my position pretty clear.

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE WILSON:** I'm not against setting up something for the Indians. The thing that I am against is setting them aside, or making a different type of education for the Indians. I merely want them equal. I want them to have the same equal status as the white people. I don't want to set up a different educational system for the Indians and the white people. I want them to be the same.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. Mr. Wilson said that he thought they were Americans. Well, I know they're Americans, and they know they're Americans. Last week I attended the Indian Education Conference at the Jefferson School. And I talked to many of their representatives there, and I was there long enough to hear Mr. Harold Gray from the University of Montana, a very fine representative of their people, speak on this very thing. And I think the people there were all unanimous in their endorsement of a recognition in our Constitution. And I think we've been rationalizing and evading them too long and avoiding our responsibility too long. I speak in behalf of the amendment and the amendment to the amendment.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Harbaugh's amendment that we add the phrase "in its educational goals" to Mrs. Eck's amendment, so that it reads: "The state would be committed in its educational goals to the preservation of cultural integrity." So many as shall be in favor of that amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed.
(No response)

**CHAIRMAN GRAYBILL:** That's adopted. Very well. The issue is now on Mrs. Eck's amendment, that the state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity. So many as want to add that to Section 1—subsection 1—of the Educational Article—yes, we'll have a roll call—may indicate so by voting Aye on the voting machines; and opposed may vote No. Have all the delegates voted?
(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** Will the clerk cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Absent |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Absent |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Absent |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Absent |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Absent |
| Felt | Aye |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Absent |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Aye |
| Romney | Absent |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |

| | |
|---|---|
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 83 delegates voting Aye, 1 voting No.

**CHAIRMAN GRAYBILL:** 83 having voted Aye and only 1 No, that motion passes. Is there other discussion of Section 1, sub. 1?
Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman—President, I have an amendment up there.

**CHAIRMAN GRAYBILL:** It appears to the Chair that your amendment goes to Section 1, sub. 2, Mr. Martin. They've made a sub. 1 and a sub. 2 of those paragraphs.

**DELEGATE MARTIN:** Oh, I'm sorry.

**CHAIRMAN GRAYBILL:** I'll call on you. Are there other amendments or discussion to sub. 1? That's the first paragraph—Oh—up from lines 7 to 12, plus the new material.
Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, would Mr. Harbaugh yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Harbaugh?

**DELEGATE HARBAUGH:** I yield.

**DELEGATE NUTTING:** The three words "full educational potential"—conceivably, could that mean kindergarten for every child in the State of Montana? Adult education for every person in Montana? Vo-tech for every person in Montana?

**DELEGATE HARBAUGH:** Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Yes, it is conceivable that it could mean that. It's inconceivable to me, however, that the Legislature would ever authorize that sort of thing, because, as I stated in my introductory remarks, this would probably break the State of Montana. That would be in my estimation, a compelling state interest and would be completely wrong, I think, and a misconstruction of the broad, goal oriented statement that we're making here, to look at that in this way.

**DELEGATE NUTTING:** Mr. Chairman

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** When you look at Section 1 and Section 2 and take them together—I know we make different statements on the floor, but still to read these two sections, I can't read them any other way but that the full educational potential of each person shall be developed. And in the last line, it shall be the duty of the Legislature to fully fund. So I—the statements we're making here on the floor and the statements that we—that I read on the page don't seem to be consistent.

**DELEGATE HARBAUGH:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** One of the reasons—the basic reason that I moved to amend this section to subsections is precisely for the reason that Mr. Nutting has pointed out. We are setting forth, in subsection 1, basically a broad philosophy of education. We're trying to lay out the goals of education. In subsection 2, which we will come to next, we're going to talk about the mandate—in other words, the implementation of those goals. And I think that you have to make this distinction, that the one is a goal; that the second is the mandate.

**CHAIRMAN GRAYBILL:** Is there other discussion? If not, the question arises on the issue of the adoption of Section—
Mr. Martin.

**DELEGATE MARTIN:** I think that a portion of my amendment to this section is in 1, the word "full".

**CHAIRMAN GRAYBILL:** Well, it may be. Your amendment says at line 13, and the word "full" doesn't appear on line 13. So if you'll tell me what you're talking about on line 10—

**DELEGATE MARTIN:** Thirteen of page 8.

**CHAIRMAN GRAYBILL:** Oh, well, just a moment. Very well. Mr. Martin, would you like us to read your amendment?

**DELEGATE MARTIN:** Yes, please.

**CHAIRMAN GRAYBILL:** Mr. Martin has an amendment. Will the clerk please read the first amendment to Mr. Martin's, because the second one applies to the second paragraph.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 1, page 8, of the Education and Public Lands Committee Proposal Number 10 as follows: At line 13, page 8, by deleting the word 'full'. Signed: Martin."

**CHAIRMAN GRAYBILL:** Mr. Martin would delete the word "full", so that the sentence reads, "provide for the establishment of a system of education which will develop the educational potential" rather than "the full educational potential".

Mr. Martin.

**DELEGATE MARTIN:** Mr. President. I find it nice to find, in the adoption of the amendment that was just made—to be on the popular side. And I must state a special interest. At one time, I was made a member of the Flathead Tribe. In talking about this amendment, I'd like to refer, if I may, to—or first of all, I'd like to extend my appreciation to the work of the Education Committee for the work that they did in preparing this article. I think it has some great potential and good for education. But I think that—there were some references made to some special interests that people had, and that was in the—an article which appeared in the *Tribune* this morning which indicated that anyone who would be in opposition to the committee would recognize—would represent some special interest. And particularly singled out was the Montana School Boards Association. At the moment, I might say that I am not a member of the Montana School Boards Association; I'm not a member of the Montana Education Association; I'm not a member of the Montana Board of Administrative School Officers. I only have a deep and sincere and abiding interest in the educational process. I think that Mr. Gardiner last night emphasized two points; the right to know and the right to have a say. And then he turned around and said, "It's time to open the doors and give the country back to the people." Throughout this article, I think there is an effort to centralize education, and I think that we should go back and review a little bit of the history. And I'm only sorry today that a man who I think was a pioneer in the promotion of educational opportunity for Montanans isn't here this afternoon, and that's Paul Harlow. Because Paul Harlow and some others were responsible for the development of the foundation program in the State of Montana. They sought and saw the opportunity to provide educational opportunity for the young people of Montana. But most of all, they took off the wraps so that the teaching profession of the State of Montana could participate in government. And I think it's a credit to the—this Convention that we have so many educators who are taking part in this. And most of all, I think it's to the credit of Montana that the educators at the State University units, as well as the educators in the schools, have taken off their wraps and buried their notions that they couldn't participate in government because that wasn't the thing for teachers to do. They were supposed to be nonpartisan, nonpolitical and shouldn't even have a chance to say. So we have provided an educational opportunity for not only the youngsters of the state, but the teachers and the people who participate in education, to participate and contribute to good government. Now, when we're talking about the full educational development, we're writing a check that would be hard to deliver, and that has been evidenced by the fact that the foundation program, since it's adoption, has never been able to fully fulfill the obligations that it started. So I think that before we write into the Constitution the idea of "full", we better take a good look at this proposition. I hope that my amendment to this section prevails.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, members of the Convention. I would like to speak in opposition to the motion to delete the word "full". I suspect that the—there's been a kind of a misunderstanding here of the problem. Certainly the inclusion of the word "full" does not command an unlimited expansion of the field of education. What it does—it does not foist upon us an artificial limitation of the field of education. So that—unlike the former Constitution that said we had to start only at this age and only go to that age or only this type of education or that type of education, the inclusion of the word "full" allows us to develop the education of Montana to its top potential in capacity. Therefore, I don't see the danger that Mr. Martin sees in the words.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Being the Chairman of the committee, I'd like to speak very briefly to this, if I may. Mr. Martin, of course, is a scholar of the English language and—(Inaudible). And actually, I think the thing we ought to be looking at, Fred, is the term "goals". And also, if we take out—what is the educational potential? I mean, can we ever measure it? Is it from 5 to a hundred and two? And if we take out "full", how much does that do for clarification? We still have educational potential as a goal. So this is the argument—I'm not quibbling over it, but I don't see any point in taking it out.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I feel that the comments that Mr. Martin made may be of a legitimate concern, but not at this point. As I explained in my other remarks and as Mr. Champoux has just stated, we're talking here about a broad statement of philosophy. Now, we're not talking about the financing of the school system, which you referred to, Mr. Martin. And I would resist the amendment. I think that "full" is a modifier here of the educational potential, and to remove it, I think, would not do anything really to change the impact or the intent of this section. I would resist the amendment.

**CHAIRMAN GRAYBILL:** Very well. The question is—
Mr. Burkhardt.

**DELEGATE BURKHARDT:** Just as one other member of the Education Committee, Mr. Chairman, I would say I hope the word "full" remains. It would be like striking "liberty" from "life, liberty and the pursuit of happiness." It is a goal, and we'll hope to work toward it.

**CHAIRMAN GRAYBILL:** Very well. The question arises on Mr. Martin's motion to delete the word "full" from line 10, on page 3, of Section 1. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it. Very well. Is there other discussion of Section 1?
Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President. Will Mr. Champoux yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I will.

**DELEGATE JACOBSEN:** Rick, in the—we've divided Section 1, now, into two sections, after Mrs. Eck's amendment and the other amendments. Now, should the—at—on line 10, at the end of the line, a person should—

**DELEGATE CHAMPOUX:** What page are you on, sir, please?

**DELEGATE JACOBSEN:** On page 3.

**DELEGATE CHAMPOUX:** At the end of line 10?

**DELEGATE JACOBSEN:** On the end of line 10, where you have a period—on "person". Should "in the public school system" not be added here, inasmuch as these two sections are divided now?

**DELEGATE CHAMPOUX:** I'd defer that to Mr. Harbaugh, since he has this section.

**DELEGATE JACOBSEN:** And also after "opportunity" on line 11, "in the public school". Mr. Harbaugh.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Let me see if I understand your question.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh, the sense of his question is whether he doesn't want to limit the language in the first paragraph to "in the public schools".

**DELEGATE HARBAUGH:** "Shall be guaranteed to each person in the public schools?"

**DELEGATE JACOBSEN:** On line 10, it says "develop the full educational potential of each person." Shouldn't the words "in the public school system" be added there, inasmuch as we've divided this section into two parts?

**DELEGATE HARBAUGH:** Mr. Chairman. In response to that, I think not. I think that if you would turn to the comments on page 9, here are some comments in regard to what we mean by this sentence. "It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person." And here we state that learning is a gradual process—or gradually being recognized as a process which extends throughout life. And that—as we all know, there are being developed, across the nation and in our own state, many educational opportunities for adults, for people of various age groups. I think that in my opening remarks, when I spoke about a new philosophy of education—I think one of the things that we need to recognize is that education is no longer thought of just in terms of very narrow boundaries of certain age limits and, in looking at the goal of education, that we want to realize that education is a continuing process. And many older people today are taking—are availing themselves of the opportunity to take courses and this sort of thing which, perhaps, they could not take when they were young. And to the extent that the state is able to provide this, we would like to make it a goal of the state to do this.

**DELEGATE JACOBSEN:** Will you yield to one more question?

**DELEGATE HARBAUGH:** Yes, I yield.

**DELEGATE JACOBSEN:** But now, does this refer to the fact that aid to private schools could come under this?

**DELEGATE HARBAUGH:** Mr. Chairman. No, this has no reference to that, at least in my mind, whatsoever.

**DELEGATE JACOBSEN:** Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue arises that when this committee does arise and report, after having had under consideration Section 1, sub. 1, as amended, that it recommend that this section shall be adopted. So many as shall be in favor of this motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Sub. 1 is adopted. Will the clerk reread Section 1, sub. 2.

**CLERK HANSON:** "Section 1, subsection 2. The Legislature shall provide for a system of high-quality, free public elementary and secondary schools. The Legislature may also provide for other educational institutions, public libraries and educational programs as are deemed desirable. It shall be the duty of the Legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system." Mr. Chairman, subsection 2.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 1, subsection 2, of the Education and Public Lands proposal, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** This subsection is the mandate for implementing the establishment of our educational system within the state. And in this respect, as I noted earlier, it is similar to Sections 1 and 6 of our present Constitution. We might note here that the courts have construed the present Sections 1 and 6 not as a limitation on the Legislature, but as a mandate to the Legislature. And this section states that the Legislature shall provide for a system of high-quality, free public elementary and secondary schools. What do we mean by the words "high-quality?" They've been used as an instruction here to the Legislature to provide not just a minimum education system, a substandard system, but one that meets a contemporary need and is capable of producing well-informed citizens. Now, the committee recognizes that changing systems of financing the public school system are in the direction of providing equality of education and that this could lead to a reduction of the kind of education that we have. In other words, we recognize that, if in the future it is required that education be equalized across the districts, that this could jeopardize the quality of education, and we would not want to see this happen. And this is what we wish to safeguard against. And, therefore, we stressed in this Legislative mandate that the state shall provide a high-quality system of education. Now again, I'd like to point out that this is not untried ground that we're treading on. The Illinois Constitution, recently adopted, states—and I quote: "The state shall provide for an efficient system of high-quality educational institutions and services". There are possibly some other words here that need explanation—the word "free". By the word "free" in subsection 2, it is understood by the committee to mean that those aspects of the elementary and secondary education which are essential to courses required by the schools for graduation shall be free of cost to the student. The words "public elementary and secondary" replace, in this article, the term "common schools", which was contained in the old Constitution—in the present Constitution. We feel that this is more precise. The term "common schools", back in 1889, referred primarily to the elementary school system. And also, we want to make it clear, by using the terms "public elementary and secondary", that the word "free" does not apply to all aspects of the educational system but that it applies to the basic education which the state is mandated to fund. In the second sentence of subsection 2, we've given a broad grant of power to the Legislature to provide for additional educational institutions and programs which it deems desirable. And according to the court interpretations of the present Article XI, Section 1, this right already rests with the Legislative Assembly under our present Constitution. So this is nothing new that is being added here. The last sentence of subsection 2 is directed toward the financing of the school system. Now, a great deal has been said about the Serrano-Priest case and other decisions across the land affecting the financing of the public school system. In analyzing our Montana finance structure, the committee found that there is great disparity between the level of school financing among the various districts of the state. This isn't something that has just come to our attention. For several years, across the nation, there has been a nationwide study being conducted on methods of financing public education. One of our members, Mrs. Cain, as probably most of you know, attended a meeting in Denver at her own expense, during the course of this Convention, to attend a meeting which solidified the results of several years of study on this very question. And whether the Supreme Court of the land rules on this matter or not seems to me to be beside the point. It's our feeling that the state should make every effort to insure that insofar as it is possible, equality of financial expenditures for schoolchildren of our state is implemented. Now, in the last sentence of subsection 2, we simply provide the means whereby this may be done. The Legislature is to provide, by taxation or other means, and to distribute in an equitable manner funds for the funding of our school system. Now I'd like to point out here that the language that we've incorporated here is very close to that of Section 6—that we have incorporated some of the language of Section 6 in this last statement. Clearly, the existing school foundation program does not meet the aims of equalizing educational burdens and benefits. A most recent study of our foundation program shows that the expenditures by the state actually subsidize districts that are wealthy more than they do districts that are poor and that, in fact, the foundation program aggravates factors which tend to make the level of education dependent on the wealth of the district. We use the term "full funding". What does this mean? Well, it means that the state will insure the funding of a basic minimum program. After the state has assessed the needs and established what a minimum program ought to be, we feel that the state ought then to provide, by whatever means it sees fit, for the funding of that program. And if we fail to do this, if we fail to provide even the minimum that we establish, then we fall far short of the goal that ought to be ours in education. The full funding requirement here will substitute equity and rationality for the confusion and for the inequities that have often plagued school financing in the past. And it will also do one other thing that I think is very important: it will free the local school boards from a preoccupation with matters of finance, so that they can focus on the real issue of education in our local communities. Mr. Chairman, I move the adoption of subsection 2.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President. I move to amend subsection 2 of Section 1 by adding, in front of the word "system" on line 13, page 3, the word "basic"; and in front of the word "public" on line 20, page 3, the word "basic". Did you find that, Mr. President?

**CHAIRMAN GRAYBILL:** Yes, I find it. I don't know why I didn't have it up here. The Chair will allow it, but I do wish if you're going to make amendments on these things, you should have thought about them, unless there's something that comes up in debate. But I'll allow it.

**DELEGATE HABEDANK:** Mr. President. The explanation gave by the committee, through Mr. Harbaugh, shows that it is in—the intention of the committee that the Legislature shall be required to fund a basic system of quality education. This is carried out by their comments as shown on page 12, where they say "the fundamental principle established, however, is that every child should have approximately the same opportunity to receive an adequate basic education." On line 17, they again say they wish to "insure the quality—insure the existence of a quality—basic educational system." On page 14 of their comments, they again say, on lines 4 through 7: "Once the needs for a basic quality system of elementary and secondary schools have been realistically assessed, the state has the obligation to guarantee that this minimum basic program be fully funded." I am a former member of the Montana School Boards Association. I was its President back in 1952. I, along with Paul Harlow and many other dedicated citizens—at least, I think I was dedicated, and I'm sure Paul was—worked long and hard in developing the foundation program of education. At that time, it was called to our attention by educators that Section 1 of Article XI of the Constitution provided that it shall be the duty of the Legislative Assembly of Montana to establish and maintain a general uniform and thorough system of public free common schools. And it was argued, not without merit, that it was the duty of the Legislature under our original Constitution to fund the common schools. But we made the objectives so high that the Legislature, nor nobody else, paid any attention to that mandate. I think that the comments as made by the committee, which clarify the fact that they do, in fact, intend to require only a basic educational program system, is good. But the comments are not before the people of Montana. And as they vote on this, I think they should be told that it is the intention of those on the committee, in their very fine draft, to require the educational—to require the Legislature to do full funding of a basic educational program and that the frills and the things beyond the basic program, as the Legislature determines it, can still remain with the people. And for this reason, I urge your support of the addition of these words to Section 2.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** Mr. President, will Mr. Davis yield?

**CHAIRMAN GRAYBILL:** Mr. Davis?

**DELEGATE DAVIS:** I yield, Mr. McDonough.

**DELEGATE McDONOUGH:** You were on the—this committee, were you not?

**DELEGATE DAVIS:** I had the privilege of serving on this committee, yes, thank you.

**DELEGATE McDONOUGH:** The last sentence of subsection 2, does that require the Legislature to put the Serrano versus Priest doctrine in at this time?

**DELEGATE DAVIS:** Well, let me read it. "It shall be the duty of the Legislature to provide, by taxation or otherwise, and to distribute in an equitable manner funds sufficient to insure full funding of the basic public elementary and secondary school system." It is my opinion, Mr. McDonough, it does not require us to put the Serrano versus Priest doctrine, whatever it is, in at this time. It seems to me that this section—the intent behind this section—was to provide for full funding of the foundation program. When I campaigned in my area, we found that one of the big problems we had was the lack of full funding of the foundation program. They had to come back in and have these various mill levies; and the first time in the history of our county, I think, we had to have three votes. So the intent there was to require the state to establish a priority for education that would make a full funding of the basic primary and elementary—secondary education programs, fully funded as a high state priority. Then, if they ran out of money at the other end, they'd have to cut their budget someplace else instead of cutting it on education each time and coming up with 90 percent or 85 percent and gradually downward, which causes us to increase our property tax levy and cause us a lot of difficulty on the local school level. Does that answer your question?

**DELEGATE McDONOUGH:** No, it does not, but I don't know if we can even answer it. I think—

**DELEGATE DAVIS:** It's my opinion, Mr. McDonough, it does not require us to put the Serrano versus Priest doctrine in at this time. They can go ahead with their foundation program; and hopefully the full funding really doesn't add anything to our present Constitution, where it says they will maintain a system. But it may be stronger language; we hope it is.

**DELEGATE McDONOUGH:** Thank you, Mr. Davis.

Mr. President.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** I object to a number of words in this paragraph. I object to the words "high" and "quality". I object to the words "equitable manner". I object to the words "full funding". What it does, I think—we get back to a basic point I've made before; this is a mandate to the Legislature. We're no longer on goals; we're no longer on preamble. We're on a mandate to the Legislature to do a certain thing, and we get back to Mr. Brazier's talk of the other day that when you use these type of adjectives—in an equitable manner—that you're actually—you may be leaving it to the Supreme Court to decide what is "high quality"; what is distribution in an "equitable manner"; and what is "full funding" of the educational program? Now, that should be left with the Legislature and the Legislature only, and nobody else. They're the representatives of the people up here to decide fiscal matters, not the Supreme Court of Montana and not anybody else. It's the Legislature that has this power, and the Legislature should have it. And I'd like to make a motion, as a substitute for all other motions, that we strike the last two sentences in this subsection.

**CHAIRMAN GRAYBILL:** Just a moment. Mr. McDonough has made a motion to strike the last two sentences of subsection 2. That's the sentence, "The Legislature may also provide for other educational institutions, public libraries and educational programs as are deemed desirable, and it shall be the duty of the Legislature to provide, by taxation or other means, and distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system." Mr. McDonough, before I give you the floor, I'd like to point out that Mr. Martin does have an amendment coming in to strike the word "high" and the sentence that you're leaving there, so that may be of interest to you. Mr. McDonough has an amendment to strike the last two sentences of this section in their entirety, to delete them.

Mr. McDonough.

**DELEGATE McDONOUGH:** Mr. President. I think we're back again on specifics and details and what's constitutional and what's for good intents and purposes and what's legislative. Actually, the Legislature has all the power to do what it said in those two last sentences. And I'm sure they will, and I have full confidence that they will. There's going to be problems from time to time, but if you leave them in as they are now worded, you're going to have more problems of constitutional—legal construction on any law suits relative to the application of these last two sentences. I think it's certainly sufficient in a constitution to direct the Legislature to provide for a quality, free public elementary and secondary schools. And really, it doesn't have to say any more than that; and when you get more detail than that, you're just opening the door to various constructions, and so forth. That's all they have to do. If we have confidence in the people of this state to elect a Legislature that should represent them, then I don't think we have to say any more than this in this subsection. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I would rise in opposition to this motion to delete. It seems to me that this effectively strips the intent of all that we have said in the goals; that it strips the intent of the Education Article. I wonder if the Legislature in the past—if we look at history, I wonder how Mr. McDonough can say that he has confidence in the work of the Legislature in the past, when we think in terms of what has happened to the funding of education and, in particular, in the funding of the school foundation program by the Legislature over the past years. I don't share that confidence. Education has taken a back seat long enough in this state. Always when we come down to the end of the session, education takes what's left over after all of the other programs have been funded. And I think by putting in the Constitution a mandate which says that we will establish a basic program, and that the state will fund that program, is very essential. These last two sentences are no more statutory than the sentences which are contained in the present Section 6. If you look at the present Section 6, you will find that it says it is the duty of the Legislative Assembly to provide, by taxation or otherwise, sufficient means in connection with the amount received from the general school fund to maintain a public, free common school in each organized district in the state for at least 3 months in each year. Now, this isn't nearly as statutory, it isn't nearly as specific as that is. And on the one hand, he argues that we're being too specific; and on the other hand, he argues that we are inviting court tests. It seems to me that this is an inconsistency in the argument, and I would speak against deleting these two lines—two sentences—from the report.

**CHAIRMAN GRAYBILL:** Mrs. Speer.

**DELEGATE SPEER:** I rise to object to Mr. McDonough's amendment because he would include in the deletion the second sentence, "The Legislature may also provide for other educational institutions, public libraries and the education—and educational programs as deemed desirable." I want to remind the delegates that this is the first time that there has been any constitutional recognition of public libraries as a part of the educational process in this state. It does not mandate the Legislature to provide for a public educational system, but I do think that it is of great value and it will strengthen the public library system in the state to include this second sentence in subsection 2 of Section 1.

(Committee of the Whole chairmanship assumed by Mr. Aasheim)

**CHAIRMAN AASHEIM:** Mr. Habedank, you have the floor.

**DELEGATE HABEDANK:** Thank you, Mr. Chairman. I resist Mr. McDonough's motion to delete. I would again call to your attention what was provided by Section 6, which Mr. Harbaugh read to you, and Section 1, which I previously read to you, where the Legislature was mandated to do this and it saw fit not to do it for many years. We attempted to bring this into fruition through this foundation program, but the Legislature was never in a position to adequately fund it. Back in the years about 1952, a constitutional amendment was submitted to the Legislature, which did not make it through the Legislature, to the effect that it would be their duty to fund this—fund the state's share of the foundation program 100 percent. If you carry out Mr. McDonough's motion to delete, you are putting the thing right back in the situation where there is no teeth in this thing whatsoever, and I think it is time that the children of Montana have a right to have taxes levied where the property is and spent where the child is for a basic—and again, I want to go back to my motion—a basic system of public education as determined by the Legislature.

**CHAIRMAN AASHEIM:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman and fellow delegates. I rise to oppose the amendment to delete the words. Now, all through the committee's deliberations, we came up with the word "equitable". Were we providing an equitable education in Montana? And this was due to the fact that possibly we, in Montana, might face a court case similar to that of California. Now, for some of the delegates who do not understand exactly what the Serrano-Priest case—I would like to go over exactly what it was. Now, the California Supreme Court finding on property taxes as the basis for support of education has generated considerable turmoil and a "back of the drawing boards" attitude on the part of the Legislature and many school people. Here is some background on the findings prepared by Gordon Winston of Sacramento Legislative Office. "Serrano versus Priest, the now-historic case involving school finance in California, began when the Western Center on Law and Poverty, a group of attorneys from UCLA, USC and Loyola Law School in Los Angeles, filed a suit in Superior Court of Los Angeles in August 1968 alleging that the scheme of financing public schools in California did not meet the test of equitable protection guarantees of the 14th Amendment of the United States Constitution and that the scheme was also a violation of equal protection clauses of the Constitution of the State of California. The defendants, various states, and Los Angeles County school and tax officials, represented by the State Attorney General's office, filed a demurrer to the complaint that was sustained by the court. A demurrer is a legal pleading which says, in effect, assuming everything you say in your complaint is true, so what? The court then gave the plaintiffs permission to amend their complaint to try the state legal cause of action. The defendants failed to amend the complaint, and the court issued an order of dismissal of the lawsuit. It was this order of the dismissal which appealed to the California Supreme Court and let the decision of Serrano-Priest. The theory of the plaintiffs' case was based upon the contention that under the system of financing public education in California, the quality of public education varied from district to district because of the accident of the amount assessed wealth, location of commerce and industry with the district. The 14th Amendment of the United States Constitution provides, in part, that no state shall deny any person within its jurisdiction the equal protection of law. The attorneys for the plaintiffs in there arguing the case before the Supreme Court stated the proposition: a quality public education may not be the function of wealth other than the wealth of the state as a whole. As we went through this case, we found that Montana also would fall into this case with our type of funding of the public education system. And in making these statements, I feel that we will reach the point to possibly fund the program—the public education in a more equitable manner. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. President, fellow delegates. I suppose I have to reveal that I have been in education for some 23 years and have been on any number of special meetings of planning where, you know, education is going to be in the next 50 years, hundred years and that sort of thing. It's a very interesting subject, but one of the things they tell us in those meetings is the fact that our schools as we know today may be our minor way of carrying on the challenge of education in the coming years. The little red schoolhouse may graduate into all sorts of other forms. One of the strengths of these last two sentences in this article is the fact that it does not lock in education in schools as being completely coterminous, that education program in the state might well have to be much more than just our schools. In planning for the future, it would be unrealistic to let those sentences go.

**CHAIRMAN AASHEIM:** Mrs. Warden.

**DELEGATE WARDEN:** Mr. President. I would just like to say that there has been little talk of libraries in this Convention, and I have long been interested in libraries, so I'll have to reveal my vested interest. I am not a librarian as an official librarian, but I am interested in libraries. I think there is a place in this article for libraries. I think that the education that people can get in future years can come in a large part from the public library. It is the only place in the community that has the past, present, and the things of the future. I think that before we think about deleting this second sentence particularly, that we should consider the fact that libraries are important. They are the education—an educational field for many, many people who do not go back to adult education or other forms of school. You have many people that are currently using libraries to help retrain themselves in different jobs. This is a vital thing, and I would hope you would think long and hard before you delete the word "public libraries" from this Educational Article.

**CHAIRMAN AASHEIM:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. It isn't very often that I have a chance to resist my good friend, Delegate McDonough, in favor of Mr. Habedank on his basic idea. I stand here as a vested-interest person, as an instructor in adult basic education with School District Number 2, Billings, for the past 6 years. And I would hate to see stricken from this article the words "educational programs as are deemed desirable". If I could shift the camera in the opposite direction, you see before you, fellow delegates, a former student of mine who came crawling into our classroom literally on his hands and knees. He was a victim of an oilfield accident and paralyzed for 3 months. Without a high school education, he could go nowhere. And now, as a result of a program that was adopted by School District Number 2, Roger Stowakin is putting the camera on me and it should be on him. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I rise in opposition to my good friend Swede's motion. I wholeheartedly agree with Mr. Habedank's comments. I think, Swede, maybe we're missing something here. When we talk about equitable, we're talking about something that's equal, but notice the word "manner". Notice the word "manner". Now, what we're talking about here is the—it's M-A-N-N-E-R. By the way, if you look at the present method of distribution, which is the census method, that is an inequitable manner. And the proof of that is right here in this book. A study—it's called *A Study of Basic Educational Programs Funding Methodology in Montana*, and I'm sure you're familiar with it. It's the study that was made by Mr. Mike Billings, Superintendent of Public Instruction Colberg's office. Now, in here, there is absolute proof that the method of distribution presently is inequitable. As a matter of fact, the variance is 10,000 to 1. And this is what I mentioned last Saturday when I said that we have evidence that a Serrano case decision could be won tomorrow. And I think you'd agree with me on this, wouldn't you? Not only that, but the study shows that wealthier elementary school districts tend to spend more—they receive more state aid per pupil in support of these programs. Now, my question is, "Why?" And I'll tell you why. It's because the manner of distribution has been inequitable, and that's why we changed it. Now to go on to the second point. If you'll look at this business of full funding, it has been developed that actually the Legislature—even though the mandate is in the present Constitution, they have not fully funded the program. Why? Because they know that whatever is needed back home, some of it can be picked up by the permissive county levy, so they can cop out if they want to. And that's exactly what's happened. So I'm against the amendment. Thank you.

**CHAIRMAN AASHEIM:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman. I seem to find some inconsistencies here myself, Mr. Harbaugh. In your explanation of full funding, I understood you to say you only meant full funding of a basic minimum program. But in this same subsection, it says "a high-quality" program. Now surely, I would like to have the Legislature full-fund it, but it seems to me there'd be quite a difference if you're going to full-fund a basic program or if you're going to full-fund a high-quality. And I don't know how much difference in money that would be, but to me, it's inconsistent to have this in there. Now, I realize there's an amendment there that would change it to "basic", but that hasn't passed yet. So at the moment, I can't help but think that we are inconsistent when we say we want to full-fund a basic program, but in the same sentence, we require a high-quality. And in defending the Legislature, which I've been a member of, I don't think they ever didn't want to; they just didn't have the money. And I still say if they're going to full-fund on an equal basis, we better not start right at the top. If you're really going to be realistic and find out if we can full-fund it, I don't think we can go right to the top right away. You're going to have to let them grow a little bit, I think.

**CHAIRMAN AASHEIM:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** A point of order, Mr. Chairman. I think that's not within the section that we're debating.

**CHAIRMAN AASHEIM:** What is your point, Mr. Harbaugh?

**DELEGATE HARBAUGH:** Well, we're debating the deletion of the last two sentences and those remarks, while I will respond to those later, but I think they're not within the section we're debating now.

**CHAIRMAN AASHEIM:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman, the section is to delete the two sentences. And I figure if we're going to be consistent, you can't have all three sentences in there. So that would be my reason for debating in that manner.

**CHAIRMAN AASHEIM:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Well, in that case, I'll respond. The—I don't feel there is any inconsistency. I would disagree with you very much, Mr. Rygg, that there is an inconsistency. If we do not finance a high-quality basic education, then what do we finance? A low-quality basic education? I feel that we have a high quality of education in Montana at present. And I think that this in no way reflects the fact that we are going to do something that sets a standard which is extreme, which is far beyond what we have at present. I think that all we are saying here, simply, is that we want to be sure that as we assess the educational needs of the state, that we set forth a realistic standard that is high in quality of what our children and youth ought to be getting. And then, that we fund—that we see to it that the state funds—in some manner. And we don't know at this time what that manner of funding will be, but that—but we do want to insure that in some manner that the state does fund at least this basic program. And I am in concurrence with the word—the amendment which Mr. Habedank has proposed. I don't see any inconsistency here.

**CHAIRMAN AASHEIM:** Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman. I'm also on the Board of Education, and I rise in opposition to deleting the last two sentences. If you go back a number of years, the Legislature started out on a foundation program appropriating around—in the neighborhood of 80, 85 percent. What did they do to us 2 years ago? They dropped to 66 percent. And if—I think I'm not mistaken, if you want to get the right—correct figure, I think it's around 65 percent again this year, or 66. What does this do? It throws all the burden back onto the districts and the property owners. This is a very hard thing to say, but what I mean—this is one way that the property owners of Montana have—one way of saying no to the Legislature. And what are they doing? Voting down our special levies for our elementary and secondary schools. And if you think for one moment that we had trouble last year, I want to warn you, we're in serious trouble this year. Because I know of a lot of districts that are going to be in serious trouble for funding their schools to operate next year. And why? Because the Legislature leaves that foundation program the very last thing to provide for in providing for our school system, and it is wrong. I don't think if you will ever give the Legislature the power to do—to take care of our schools, they will never do it any more than what they have done in the past. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Davis.

**DELEGATE DAVIS:** Mr. Chairman, I, too, am a member of the Education Committee, and I'm not a teacher, and I didn't even learn too much there at times; but a lot of effort was made on this. I think possibly Mr. McDonough's motion was partially made as a result of maybe a very poor answer I gave to him on his question about whether this dealt with Serrano, and also possibly because of my Delegate Proposal 68 which I had proposed—that, you may have noticed, at the back of your book, "that the Legislative Assembly of Montana shall establish and maintain a general, uniform, thorough and equitable system of public free common schools, open to all persons, as provided by law". This was not adopted by our committee, and that's not the reason I have the only negative vote cast against this in the back of the book. I am for the full funding. I do—there's just no way that I could not concede, as an attorney, Mr. McDonough, that the second sentence that says the Legislature may also provide for educational institutions, public libraries and educational programs as are deemed desirable—there's no way I could say anything—but that's statutory, because they have that authority whether it's in there or not. They've implemented that, starting with vo-techs and community colleges, and the great system of education we now have in Montana that's expanded from those few words in our 1889 Constitution. I do—so I could not argue with you as to the second sentence. It was a bow, in a sense, to the public libraries, which we're all for, and they were incorporated, and it was placed as the Legislature deemed desirable. Also, at the time I voted against this particular sentence, it was early, when we were more purists than we were now, when we had some constitutional thoughts of what should and should not go in a constitution. We've deviated quite a bit at this time, so I don't even object to that sentence. I do think the last sentence would have a lot to do with Serrano if it were tried in Montana. I have a basic thing—if taxation is equitably derived and equitably distributed, we will meet the test regardless of what formula we come up with. And I think if we can go with the basic system of education—and I can't speak for all the committee, I can certainly speak for myself—when we pass this section, which I voted to pass and with the majority on this, it incorporated the language. And Mr. Harbaugh has testified to the language here that he means a basic system. And I think we need a basic system, and I think the full funding is very important. And it seems to me that we're doing exactly the same thing you did here that you did, and we're consistent with your action in Revenue and Finance in taking off the 2-mill levy and leaving it open so there could be funding for this very purpose. Now, if you took the 2-mill levy off in Revenue and Finance for anything other than education, then I sure hope we can consider that later on again. So I would oppose the deletion of the last sentence in this and support some amendments as they come along. And I think we'll still have a pretty good section here.

**CHAIRMAN AASHEIM:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. Chairman, I rise in opposition to deleting the last two sentences of this article as proposed by Delegate McDonough. I'm afraid that if we do this, this may be an indication to the Legislature that we're not interested in full funding of the school program. I think that even though we may not get full funding all the time, that by leaving this language in, it at least is an indication that we would like to have full funding. I also—while I'm up, I want to also support Delegate Habedank's amendment to insert the word "basic". I think that that way, the Legislature then would be on—we'd go on record as notifying them that we expected them to fully fund a basic education system.

**CHAIRMAN AASHEIM:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman, I wanted to simply refer, I think—and I'm speaking against the deletion of the two sentences as a member of the Education Committee. I wanted to refer to the report of the Revenue and Taxation Committee, on page 6, which Mr. McDonough has signed, and simply underscore what our fine lawyer member of our committee, Carl Davis, has just said. I'll read from that page 6 of their report, beginning with line 11: "The committee has heard conflicting testimony on the Serrano case and its application to the Montana situation, but the overwhelming weight of the evidence indicates its applicability. The committee simply had to face the possibility that Montana may have to levy a statewide property tax for educational purposes. That possibility was strengthened by the acceptance of the Serrano doctrine in Texas, Minnesota and New Jersey." I would simply say you have faced it there and done what you had to. We faced it here and did what we feel we had to.

**CHAIRMAN AASHEIM:** Mr. Martin.

**DELEGATE MARTIN:** I wonder if Mr. McDonough will yield to a question, please.

**DELEGATE McDONOUGH:** Yes, sir.

**DELEGATE MARTIN:** Mr. McDonough, are you aware of the fact that the voters of California have initiated an initiative to limit the property taxes in California in the light of the Serrano decision?

**DELEGATE McDONOUGH:** Yes, I am.

**DELEGATE MARTIN:** Another question, sir, if I may.

**CHAIRMAN AASHEIM:** You may.

**DELEGATE MARTIN:** You're aware also, I presume, of the fact that 70 percent of every tax dollar in the State of Montana is for schools?

**DELEGATE McDONOUGH:** Yes, I am.

**DELEGATE MARTIN:** And may I say one other—well, that wouldn't be pertinent to your question, so—

**CHAIRMAN AASHEIM:** You may answer that if you want to, Mr. McDonough. You didn't finish your answer, I'm sure.

**DELEGATE McDONOUGH:** What they're doing here is actually mandating Serrano versus Priest into the Constitution of the State of Montana. And that's what I object to; mandating it.

**CHAIRMAN AASHEIM:** Mr. Woodmansey.

**DELEGATE WOODMANSEY:** First of all, I'd like to say I was a member of this committee that worked on this document. I also think that you should know that I am a teacher, so I do have an interest here. Just a couple of comments regarding the motion to delete these two sections by Mr. McDonough. I think there's fear here that we're asking the state to do all of the financing for education. This is not what we're trying to do. I think what we're trying to do here is to do what the foundation program has not done. I don't think we're trying to eliminate levies at the local level. I don't foresee this, and I would hate to see it come. I think at the local level, still there should be ability—or the people should be able to have a higher quality of education and in some other community. And I really think the underlying fear here is that the state is going to provide the total financing, and this is not true. We're asking for the full funding; and when we're asking that, we're talking, really, in the sense that we have in the past in this area. Thank you. Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Holland.

**DELEGATE HOLLAND:** Yes. Will Mr. Davis yield for a question?

**DELEGATE DAVIS:** Why did you come back? Yes, I yield.

**DELEGATE HOLLAND:** Mr. Davis, I'm a little bit concerned about this public library. I don't understand it. In some towns the libraries are owned by foundations, or sometimes by the city, sometimes by the county. Are you going to build libraries with school funds and fill them up? What is the meaning of that? That has me concerned.

**DELEGATE DAVIS:** Well, the meaning of "public", you know that, and the meaning of "libraries". And that means that if the Legislature wants, they can establish public libraries. As I say, there's no question; but that's all it means. And I defer that to our honorable Chairman. I don't know why you asked me, the only lawyer, about the libraries, with all the educators on our committee. Maybe Mr. Champoux can answer that. Would that be all right, Mr. Holland?

**DELEGATE HOLLAND:** Thank you.

**CHAIRMAN AASHEIM:** Mr. Champoux, do you want to answer that?

**DELEGATE CHAMPOUX:** Please. I would like to answer Mr. Holland. May I refer also to comments—

**CHAIRMAN AASHEIM:** You have the floor.

**DELEGATE CHAMPOUX:** First of all, Dave, there is a trend today—No to your question, all right?—in that it says "may". But there is a trend today in certain areas. We know of one instance, for instance, in the State of Montana where they're trying to consolidate library facilities in the city. It's a small town in eastern Montana. And there is something—there is a concept of what's called a learning resource center. So it is conceivable that in the future in the State of Montana, you might have, for instance, the library in conjunction with the educational institution in the city. By that I mean, there they would have stored things like films, audiovisual equipment, and so forth, and that the schools could also, you know, go and apply themselves in terms of distribution and getting the product. So we're saying "may" on the one hand, and we're providing the—you know, if the Legislature wants to do it, they can. May I refer to Mr. McDonough's question at this point, please? Swede, the Serrano case did not only concern taxation in terms of the tax burden, but it also concerned distribution. Have you ever read that case?

**DELEGATE McDONOUGH:** Yes.

**DELEGATE CHAMPOUX:** And you know this, then. Now, if you look at what we have provided—we thought we provided—and I still—we think we have provided as flexible a section as possible, so that if Serrano does come into being—and I think you would agree that it's going to come—then we've made it as flexible as possible, so that the Legislature could bring into process, if you will, a method of equitable distributing of money in providing the taxation by either direct taxation or other means. You see? Thank you.

(Committee of the Whole chairmanship assumed by Mr. Graybill)

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman. I wonder if Mr. Woodmansey would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Woodmansey?

**DELEGATE WOODMANSEY:** I yield.

**DELEGATE McCARVEL:** Mr. Woodmansey, I'm just one of these that didn't get an education, so I'd like to be educated here.

**DELEGATE WOODMANSEY:** I don't say I'll do it, but I'll try.

**DELEGATE McCARVEL:** Well I—you said that this does not mean that the Legislature is going to fund all the schools—public and elementary schools. And the way I read this, it says it will insure full funding.

**DELEGATE WOODMANSEY:** We're talking about the foundation program; and I think, Mr. McCarvel, you know as well as I do, in each community throughout the state today there are voted levies. And even if the foundation program were funded fully, in many communities there would still be voted levies. And what I'm saying is that it's my belief, and I think it was the belief of the committee, that in a community who wanted—that wanted a higher quality education than the basic program—the foundation program provides, they still have the right to have voted levies. And the state isn't going to pay the full way in every community necessarily

**DELEGATE McCARVEL:** Would Mr. Woodmansey yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Woodmansey?

**DELEGATE WOODMANSEY:** Yes, I will.

**DELEGATE McCARVEL:** I see no place in this article where it says "foundation program". It just says it shall be the duty of the Legislature to furnish and provide taxation or other means to distribute, in an equitable manner, funds sufficient to insure full funding. I don't see where the foundation program comes in here at all

**DELEGATE WOODMANSEY:** I feel that it's implied in the area where we discussed the area of full funding. I feel that it's implied here. You may not feel so, but I think we felt, in the committee, that it's implied in this section, full funding.

**DELEGATE McCARVEL:** Well, to me, the section is vacant, Mr. Chairman. I don't know, I think they should do a little more work on it, because my basic education is—does not grasp anything other than the state will have to fund the whole school system by taxation.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. McDonough's motion to strike the last two sentences of subsection 2. Now, we'll continue to debate it, but let's be on the point.

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I'd like to ask Mr McCarvel to open his Constitution to Section 6 of the present Constitution and to read the language in Section 6. It says: "It shall be the duty of the Legislative Assembly to provide by taxation or other means—or otherwise sufficient means"—and then some other words—"for the funding of the common schools." The language that we are proposing is really no different from this, and I think we are missing the point. I think that the intent of what we're saying in these last sections here is simply that the Legislature shall make provisions. The provisions may be to authorize property taxes at the local level; it may be that the Legislature will decide to make an appropriation. The Legislature already provides the means for the funding of the public schools, and as I see it, this does not change that at all. It simply opens the door so that if we have to change the system in some way, we can do it; we're not locked in.

**CHAIRMAN GRAYBILL:** Very well. The issue is still on the motion to strike the last two sentences. Now, if you have something new to add, please speak. Otherwise, I think everybody has the idea.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I may as well put the final coup de grace to Swede McDonough in that I rise in support of Mr. McDonough. (Laughter)

**CHAIRMAN GRAYBILL:** See if you can make it quick, Mr. Joyce. Go ahead.

**DELEGATE JOYCE:** Before—the reason that—this just occurs to me. What if the next session of the Legislature repeals the Foundation Act, what will this section mean? It seems to me we've been talking doubletalk all around the room all day, that it means this and it doesn't mean that. And when we come right down to it, what everybody means is that the Legislature shall provide for a system of high-quality public elementary and secondary schools, period. And that's what we hope that they will do. That's all they can do. It's up to the people of Montana to be able to fund it if they can. To require them to do something which they—you can't force them to do anyway—it's just writing nonsense into the Constitution. Constitutions are supposed to be—to pertain to law. And the Legislators represent the people of Montana, and the people of Montana want to fund their schools if they can afford them, but they don't want to necessarily impose sales taxes to do that. I think that's relatively evident. And so it seems to me that the prudent thing to do is to do like the State of North Dakota did and simply say that we'll have a system of free public elementary and secondary schools. And, secondly, that just because we have statutory material in the current Constitution which has been ignored all these years and has been—no one has interpreted them to mean anything, is a good reason why we should get back to basic constitutional law and simply retain the first sentence of the section. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. McDonough's motion to strike two sentences.

Mr. Aasheim.

**DELEGATE AASHEIM:** I assure you I have something new to add or I wouldn't have rised.

**CHAIRMAN GRAYBILL:** Good.

**DELEGATE AASHEIM:** Mr. Chairman. It's going to take me just about one minute. To be against education today was like being against motherhood 10 years ago. This also may change. I hope I don't. And I want to express now that I also have an interest in education, because whenever we do not have a child that is properly educated, he may become a charge on the state and it will be my responsibility to help support him. However, I see that you have deviated from the original Constitution—our present Constitution. You name public elementary and secondary school system. Why didn't you remain with the language to say public schools? Then you are all-inclusive. I also want to warn you about this trend toward centralization of financing public schools. I am very much concerned that it may defeat, eventually, our concern for a better public school system. You know—and my district is one of them—they are willing to levy taxes to educate their youngsters way and beyond what some of you people realize because there are programs that they want. Some areas want a new gymnasium. By the way, are we funding—are we building school buildings in this program that you people are advocating? It doesn't say you're not. Under the present system, we can emphasize a music program if we so desire. We can build racetracks. We can have horseracing if we wanted to, if you want to go way out. If, under the present system—but if we're going to centralize our educational program, what incentive will there be on the local level to do a better job for our children? Think about this.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** Mr. Chairman. I, too, would like to rise in support of Mr. McDonough's amendment. And I feel I sure got a dirty look from the Chairman there, but I have a comment. I would like to share a thought or two with you. First, as I was sitting and listening to the comments and to the expressions on the faces of the body here, I asked myself, "If I were going to send one person over here to write a Constitution that I thought would be the best one for the people of Montana, who would that person be?" And I'll tell you who that person would be: it would be Swede McDonough. So when Swede is concerned, I am pretty concerned myself about the impact this may have on our legislative bodies of the future. As I sat in an Education Committee meeting one day, the thought came back to me of a dog race that I had attended at one time in my youth, when I was somewhat wayward, and I noticed that the baying greyhounds were chasing a white rabbit around the track. And as the greyhounds got closer to the white rabbit, the white rabbit kept getting a little bit faster and a little faster. There was never any hope of the greyhounds catching that rabbit. And I happened to ask one of the people that was working at the track, "Do the greyhounds ever catch that rabbit?" They said, "No; the biggest problem is not whether they catch the rabbit or not, it's whether the rabbit gets too far ahead of the greyhounds." Now, I kind of likened, as I sat in the Education Committee—perhaps we, the taxpayers—and you are certainly included in this "we"—are chasing a white rabbit around a track. I think it is important that we keep a fair gap between the rabbit and the dogs, or the taxpayer and education. If it gets a little too far away, the taxpayers are liable to say, "I'm tired running; I'm going to take my investment, I'm going to take my business, I'm going to leave Montana. I can't keep up with that white rabbit." Now, in the committee on Education we heard this testimony, that here in Montana, the taxpayer rates third—ranks third in the United States. Of 50 states, we rank third in the individual's contribution to education. That leaves two spots: number two, which we may be able to attain, but once we get into number one, there's nothing else to compare ourselves with. So when I peruse this article and I go back to the words which Swede McDonough referred our interest to, in the second line, "it shall be the duty". And I would like to say to Reverend Harbaugh that in his comments he continually uses the word "may", but I would refer him to the writing here, "It shall be the duty of the Legislature". And down in the next line, "to insure full funding of our elementary and secondary", and then, referring back to the wording in the top of the paragraph, "of high-quality, free public and elementary education." So when you take these three phrases and read them together—I personally understand what Mr. McDonough is talking about, and I am concerned. I would like to ask the body to consider his amendment and vote in the affirmative on his amendment. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. My remarks will be brief, too. It said that this wouldn't really make too much of a change. I'd like to point out to you that once you put your school boards in nothing but an administrative position and instead of being tax collectors as they are now and responsible for the budget that they set, that they will now be administering the money that they get and every school board will be in there for all they can acquire from the state. And I can see no end to the amount of costs that we'll have, because all the little frills that we once wanted, we'll now be after. I think this is a very important difference in our school structure, whether it's on a local level or whether it's on a state level, as far as the funding is concerned and who's responsible in supplying the money. I have one other question that maybe somebody can answer. These two little words, this "other means". Just for the record, I wonder if the committee would go into a little more detail on what the "other means" are.

**CHAIRMAN GRAYBILL:** Mr. Wilson. I'm not going to let Mr. Harbaugh speak till he closes. Do you want to speak, Mr. Wilson? Okay. Mr. Harbaugh, I guess we're—

Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman. I would just like to add one thing. If we adopt Mr. McDonough's amendment and strike these words, we will be taking a step backward. In the Constitution of 1889, they said "It shall be the duty of the Legislative Assembly to establish and maintain". We are not even going to give that command, if we adopt his amendment, to the Legislature. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Now, Mr. Harbaugh, you may close. You may close on your part, and then I'll go to Mr. McDonough to close.

**DELEGATE HARBAUGH:** I was just rising to respond to the question about "other means".

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE HARBAUGH:** "Other means" is the exact language that's taken out of the old Constitution. It refers, basically, to the foundation program—pardon me, not to the foundation program—to the income and interest funds that are presently distributed to the schools. This is not a taxation levy, but this is a distribution of the "I and I" money.

**CHAIRMAN GRAYBILL:** Very well. Mr. McDonough, now you may close.

**DELEGATE McDONOUGH:** Mr. President, this will be short. Actually, I'm in full agreement with the Serrano versus Priest case, and the Serrano versus Priest case is covered very fully under goals of Section 1 where it says "equality of educational opportunities shall be guaranteed to each person of this state"—and that's basically all Serrano versus Priest says—that—As to the distribution of money and so forth, we're getting back into a Legislative thing by that last sentence of the subparagraph 2, and it should be stricken and should be left entirely to the Legislature to guarantee the equality of educational opportunities to every person in the state. Thank you.

**CHAIRMAN GRAYBILL:** Very well. Do you want a roll call vote? Very well. All—Mr. McDonough's amendment would strike lines 14 to 19—strike the last two sentences of subparagraph 2 of Section 1 and would leave just the first sentence of subparagraph 2. So many as shall be in favor of his amendment—namely, striking that—please vote Aye on the voting machines; so many as shall be opposed, please vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Absent |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Absent |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Aye |

| | |
|---|---|
| Melvin | Aye |
| Monroe | Nay |
| Murray | Absent |
| Noble | Nay |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Aye |
| Sparks | Absent |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 43 delegates voting Aye, 46 voting No.

**CHAIRMAN GRAYBILL:** 43 having voted Aye, 46 No, the amendment fails. We're now back on Mr. Habedank's motion about the word "basic"—to add the word "basic" on line 13 so it says "a basic system of high-quality education" and add the word "basic" on line 20 to make it "of the basic public elementary system". Is there any other discussion of that matter?

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I support the basic—addition of the word "basic" here. I would like to ask Mr. Habedank, however, if he feels that it is necessary to include it in line 20. It seems to me that it's somewhat redundant there.

**DELEGATE HABEDANK:** Mr. Harbaugh, of the two places, I would consider "basic" more needed in line 20 than in line 13. I don't consider it redundant in either place.

**DELEGATE HARBAUGH:** I have no objection to it.

**CHAIRMAN GRAYBILL:** Very well, do you want to close, Mr. Habedank? Have you?

**DELEGATE HABEDANK:** I close.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Habedank's amendment to add the word "basic" in line 13 and 20.

Mr. Romney, did I miss you? Do you want a roll call?

**DELEGATE ROMNEY:** Yes.

**CHAIRMAN GRAYBILL:** A roll call vote. All those in favor of adding the word "basic", vote Aye; opposed, No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Absent |
| Dahood | Absent |

| | |
|---|---|
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Absent |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Absent |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Absent |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 86 delegates voting Aye, 3 voting No.

**CHAIRMAN GRAYBILL:** 86 having voted Aye, 3 voting No, the motion to add the word "basic" prevails. Ladies and gentlemen, we have some other amendments to subsection 2 of Section 1, but before we take them up, I'd like to call on Mr. Eskildsen. And—

Mr. Schiltz, do you have a matter before then?

**DELEGATE SCHILTZ:** Yes, Mr. Chairman. Members of the Committee, there's a gentleman sitting today at a desk that I once occupied when Mae Nan Robinson was 4 years old, and I'm sitting at a desk in the approximate area that he occupied at that same time. And I would like to call your attention to the presence of a great citizen of Montana, a gentleman who was the Speaker of this House of Representatives several times, in an era when we had some Legislative giants in Montana, and the father of our President, Mr. Leo Graybill, Sr. Would you all give him a hand.

(Applause)

**CHAIRMAN GRAYBILL:** Thank you very much, Mr. Schiltz. I did explain to him that if he voted there, it was a felony. (Laughter) But Mr. Garlington and Mr. Gysler are taking good care of him.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move we recess until 3:45 p.m. this afternoon.

**CHAIRMAN GRAYBILL:** The motion is to recess till 3:45 p.m. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Recess 3:25 p.m.—reconvened 3:50 p.m.)

**CHAIRMAN GRAYBILL:** The committee will be in order. Mr. Vermillion, will you close the back doors, please? Temporarily. Ladies and gentlemen, I want to make an announcement which may be of interest to you. It's the management's intention not to work tonight. I find that it's very difficult sometimes on some of you when we work too long. However, I would like to suggest that you might read carefully the rest of the book and get yourself ready for tomorrow so it doesn't take quite so long. We want to finish this article tomorrow. If we finish this article tomorrow, which will, I think, in itself be difficult, we'll still be one day behind. And we intend, therefore, to work Monday. So if you need to make plans based on that, you might want to make them. We intend to work Monday but not work tonight. Very well. The issue is on Section 1, subsection 2. We have a number of amendments presented during the recess.

The Chair will first recognize Mr. Martin. Do you want your amendment read from the Chair, Mr. Martin?

**DELEGATE MARTIN:** Yes, sir.

**CHAIRMAN GRAYBILL:** Will the clerk please read Mr. Martin's amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 1, subsection 2, page 8, of the Education and Public Lands Committee Proposal Number 10 as follows: at line 16, page 8, by deleting the word 'high'. And further amend at line 22, page 8, by adding between the word 'manner' and the word 'funds' the following words—quote: 'to the several school districts of this state'—end quote. Signed: Martin."

**CHAIRMAN GRAYBILL:** Very well. The point of Mr. Martin's amendment is to strike the word "high" on line 13, the end of the line—end of the sentence—end of the line there so that the sentence reads: "The Legislature shall provide for a system of—for a basic system of quality free public elementary and secondary schools", instead of "high-quality", and then to add, on line 19—if you have your books—after the word "manner", the phrase "to the several school districts of the state" so that that phrase reads: "and to distribute in an equitable manner to the several school districts of the state funds sufficient to insure full funding of the basic public elementary and secondary school system."

Mr. Martin.

**DELEGATE MARTIN:** Mr. President. It seems obvious that we don't need "high" when we're talking about quality, because it contains the same language. So I think I'll just stop at that. But I would call your attention to the fact that Section 6 of the present Constitution provides "it shall be the duty of the Legislative Assembly to provide, by taxation or otherwise, sufficient means in connection with the amount received from the general school fund to maintain a public, free common school in each organized district of the state for at least 3 months of the year." In Section 5, we also have the reference to the several school districts of the state. It would seem that the present article completely omits the reference to school districts, and I would think that we don't want to see that happen.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I wonder if Mr. Martin would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Martin, will you yield?

**DELEGATE MARTIN:** Yes.

**DELEGATE HARBAUGH:** Mr. Martin, would you have any objection to dividing your amendment, because as a committee, there may be a difference between how the committee feels about this? We have no real strong objection to deleting the word "high", but we do have serious reservations about the last part of that amendment, and I would explain our reasons for that. But would you consider dividing your motion?

**DELEGATE MARTIN:** Surely.

**CHAIRMAN GRAYBILL:** Is it my understanding, Mr. Martin, you want to divide your motion?

**DELEGATE MARTIN:** I'd be agreeable if that's the way they want to go.

**CHAIRMAN GRAYBILL:** All right. Let's take the word "high" first; so we'll hold the rest of Mr. Martin's amendment and we'll discuss only the deletion of the word "high". Is there any further discussion of that? If not, all in favor of deleting the word "high" on line 13 so that the sentence reads "The Legislature shall provide for a basic system of quality free public elementary", et cetera—so many as are in favor of that, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** That's passed and adopted. Now, Mr. Martin, we'll allow you to have the second part of your amendment. Is there discussion?

Mr. Martin.

**DELEGATE MARTIN:** Do you want me to move it again?

**CHAIRMAN GRAYBILL:** No, you don't need to move it again. Is there discussion?

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Yes, Mr. Chairman. We feel that there is a reason why we deleted these words. These words were in the present Constitution and their inclusion in Section 1, I think, could cause serious problems for us in this respect—that the distribution of funds to the various districts involves distribution of the interest and income money of the state, and the way in which that distribution has been done in the past is on what you might call a flat grant basis. In other words, each district of the state gets so much money per child that they have in attendance in the school district. Now, this has been part of the problem causing an inequity in the financing of the systems. The flat grant method of financing in our state is one of the things that causes the spread between the wealthier districts and the poorer districts to be greater. And therefore there may be instances in the distribution of this money, if we're concerned about equalizing the financial funding of the school systems, there may be instances in which a district would not be eligible to receive the "I and I" funds, if we're trying to equalize education. And therefore to add here the language "to the several school districts" may indicate that each district was to receive the "I and I" funds. And we feel that this could be a problem, a sort of roadblock in the way of equalizing the educational expenditures across the state. So we resist the inclusion of these words in subsection 2.

**CHAIRMAN GRAYBILL:** Very well. Is there—

Mr. Wagner.

**DELEGATE WAGNER:** I'd like to ask Mr. Harbaugh a question.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh, will you yield?

**DELEGATE HARBAUGH:** I yield.

**DELEGATE WAGNER:** Gene, don't you say that the funds will be distributed in an equitable manner? Wouldn't that take care of that?

**DELEGATE HARBAUGH:** Mr. Chairman. Yes, I think it would. This is what we're aiming at, is an equitable distribution of the funds, and I think that the inclusion of this phrase would be a limitation on that, possibly that we wouldn't want to see put in there.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. I wonder if Delegate Harbaugh would lead—yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh, will you yield?

**DELEGATE HARBAUGH:** Yes, I yield.

**DELEGATE MARTIN:** Isn't—presently, hasn't the foundation program enacted legislation which provides for a 25-mill and a 15-mill, 40 mills in each county for equalization?

**DELEGATE HARBAUGH:** Yes, it has.

**DELEGATE MARTIN:** Is it the intent of the committee that this would be abandoned, that all districts—all taxes would be paid or all funds would be supplied by the state rather than the counties?

**DELEGATE HARBAUGH:** No, this is not necessarily the intent of the committee. All we are doing, Mr. Martin, is trying to leave the door open for some new system. We don't know what the system will be, but we don't want to place impediments in the road of possibly that type of system of funding.

**DELEGATE MARTIN:** Don't you think that the Legislature should have some leeway in what they could do?

**DELEGATE HARBAUGH:** That's precisely what we're attempting to do is—

**CHAIRMAN GRAYBILL:** Very well. Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. It seems to me that education is the grassroots of the people and that the school boards are an integral part of this movement and that the general public has some rights. We have given powers to the Legislature in the Legislative Article to have annual sessions to meet the problems as they arise. We haven't got the Serrano-Priest decision here yet; it probably will be several years before it comes. And I think that some consideration should be given to the counsel and judgment of the school districts throughout the state.

**CHAIRMAN GRAYBILL:** Mrs. Cain.

**DELEGATE CAIN:** I think if Mr. Martin will look at our Section 8, he will notice that we, too, are recognizing the school districts and the election process of the district trustees.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I would like to state first of all that the committee believes that the local school board is the very basic foundation of our educational program and there is no intention whatsoever to take anything away from the local school districts. However, there are some problems here that's very obvious to us in the Education Committee that have studied this problem extensively that we're trying to bring out to you, and they're not coming through. For instance, if you look at the current method of distribution, which is called the census—this provides that every school—every child between the age of 6 and 21 is going to be counted, then they're going to distribute the money on the basis of that count. Now, what's resulted from that, as we have found out? Well, in some cities like—take for instance—well, we'll take Butte as an example—I was talking to Joe about it just a little while ago—that has a larger population—Catholic population—than typically another city has. In that city, every child between the age of 6 and 21 is counted and the funds are distributed to the public school system. Now, if you take another city that doesn't have any Catholics, we'll say, or any other nonpublic schools, the amount of money that would be distributed in those—in that city would be less than the amount of money that would be distributed in a school—in a district with a lot of nonpublic students. This is unequal. It is an inequity, and Serrano does apply. If you look at the—if you could study this foundation program and how it's developed, it does provide, as Fred has said, county equalization. That is not going to be taken away by this section whatsoever. That is a determination of the Legislature as Mr. Martin knows. The thing we're talking about in the middle here is this business of state equalization, though. And, for instance, when we talk about full funding of state equalization, we're not talking about 100 percent of all of the funds. That doesn't mean that every school district is going to get total funding from the state. But we're asking for total funding by the state of the state's obligation, by taxation or other means. I hope that will clear up a little bit more.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman. I would like to clarify a little more—go a little bit deeper than Mr. Champoux. Now, I, as a delegate from Butte—the first thing that came up—and, of course, we have to go ahead on this answer, because I think it all comes into perspective in this particular section—now, when this first came up, the dropping of the census as—which will be in Section 5 as a basis—now, I'm going to the Legislature to choose what method they will use. In other words, for using this "I and I" money. I protested quite vigorously. And I felt that Butte—Silver Bow County—would suffer greatly through this change, because we do have quite a parochial school attendance. And, of course, I did quite a bit of investigating myself on this matter, and I found that through the equalization process that we will have after this, the money that will not be distributed exactly on the number of students—on average number of belonging—will come back to the school districts and will come back on the foundation program. And actually, I think they will, actually, from what I could see, will benefit from this even more. So in other words, what I'm trying to—if someone had the idea that possibly they would lose on this, this is not true; by going away from the census and letting the Legislature decide whether they go on the ANB or any other type of funding—but I hope I've made it a little clearer on this one point, that these cities with parochial schools will not lose tax money because of this change.

**CHAIRMAN GRAYBILL:** Just a minute. Are you ready to close, Mr. Martin?

**DELEGATE MARTIN:** Delegate Champoux would yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I will yield.

**DELEGATE MARTIN:** Under the provision of this article as it's written, would you say that there would be an opportunity to expand some of the state educational funds for other purposes than for the districts and elementary and secondary schools?

**DELEGATE CHAMPOUX:** What, specifically, were you referring to, Mr. Martin, when you say "for other"?

**DELEGATE MARTIN:** Well, supposing we talk about community colleges.

**DELEGATE CHAMPOUX:** All right, suppose we do. Go ahead.

**DELEGATE MARTIN:** Isn't there that possibility, that some of these funds could be given for that? Should the decision be left within the Constitution, or shouldn't it be left to the Legislature?

**DELEGATE CHAMPOUX:** Mr. Martin, if you read the first sentence in here, it mandates the Legislature to provide for the system. Therefore, I think that that's all that has to be said. The Legislature has the provision.

**DELEGATE MARTIN:** Why is it the committee doesn't consider the school boards?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Well, we have considered the school boards, Mr. Martin. If you'll remember my opening remarks, I appended—amended Section 5 where it says "school districts", period. And there, you see, there's the funding again that Mr. Woodmansey will enlighten you on when we get to that section. So we haven't taken out the school districts; they're there. We love them; we hope they remain there. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman, fellow delegates. It seems to me that we are spending a lot of time and being completely confused about the amendment that Mr. Martin has here. I feel that it is very essential and something that will not detract from the integrity of the Education Committee but will make it a little clearer to whom this money is going to be distributed. It will merely be distributed equitably to the several school districts. And I think it's a good amendment. And I realize the committee seemed to have a moral obligation to themselves to get their exact wording put into the Constitution that they have labored so laboriously on and are cherishing so dearly. But from a truly educational standpoint and from an executive operation standpoint, I feel that these words are very useful and will tend to take away any fears that the school districts or the school people may have about how this money is to be distributed and to whom it is to be distributed. I hope we vote soon and in favor of Mr. Martin's motion.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. If I heard right, the committee said that this is what the—the words in Mr. Martin's motion are what they intended. I feel that if this is going to not be against what the committee intended and make it clearer for the people that read it, I think we should put these words in. So I support the amendment.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Just to make the point clear, we would agree to go for the school districts. You can put that in. However, if you say "several school districts", you may run into some problems, because this reinforces the inequalities of wealthy districts versus poor. But you can put in "school districts", as far as I'm concerned. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. I rise in opposition to the substitute motion. We're getting right back into this same problem, which the committee tried to avoid all the way through its work, of setting up something that would be hard for the Legislature to face the—anything they—any proposition they might have to face under the Serrano versus Priest case. We want to give them plenty of leeway, and if we tie this down to each of the school districts, then we get right back into the very same thing that was stated in Serrano versus Priest. And while I'm speaking here, I'd like to make one other statement. I am sure no one on this Education Committee had any idea of, in any manner, deteriorating from the position of our present school districts. They like them, and they want to keep them there. But one thing we're all overlooking is that we may not be faced with Serrano versus Priest. We may be faced with a charge under the 14th Amendment of the United States Constitution, and then where will our small school districts be if we don't provide the leeway that the Education Committee has tried to provide for meeting those situations?

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President and fellow delegates. I think we've got to realize a problem that we are at this juncture—that there's no one but the Legislature that can provide the finances for the school district because we've passed the Revenue and Finance section which says the Legislature is going to assess—equalize. So there's nobody but the Legislature that can do this. So that is one reason it's here. For the purpose of the record, I think that if you have a foundation program or whatever means—say you have so many mills in our district or in any district—the main idea is that the state sets up a program or formula and says "your district's share is this and our share is this" and they pay their share. In other words, they fund their part of it. And that's the big problem we've been having now with our schools throughout the State of Montana; they don't pay their share of their own formula that they've set up and adopted and then we have to come back and have an additional voted levy at the district level and the people don't understand why the schools are doing this. So I think the record should show, and I can confirm for the purposes of the record, that at no time in the Education Committee's hearings have we ever discussed operating schools other than through your local school boards and through your local districts, and we certainly wouldn't want it any other way. So I personally have no objection to the fact that the school districts should be in there, whether you want to put "several" or how you want to put it in. I think it'll all come out the same, because I know no Legislature is ever going to change that either, because they're all elected from someplace, too.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Will Mr. Davis yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Davis?

**DELEGATE DAVIS:** I yield.

**DELEGATE HARPER:** Mr. Davis. I see what Mr. Martin is getting at. He wants to make sure that "several school districts" are mentioned in here, but just for a layman reading it, when you say to distribute in an equitable manner to the several school districts of the state, does that imply—it does to me—an equal amount to each of the school districts?

**DELEGATE DAVIS:** Well, I don't think so. It wouldn't be my thinking on it. I think under the Serrano case, they say what's equitable can be based on need. And it's based on need right now and it's inequitable. And that's what Revenue and Finance told us. Some counties weren't assessing up to the full value and another one was. So then the state funded the in-between. Does that answer it?

**DELEGATE HARPER:** Yes.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President. I've been following this with interest to see where I've missed the point here. If this isn't distributed to somebody such as the school district, who is it going to be distributed to?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** When you use the term "elementary and secondary school system", all—there isn't a single elementary or secondary school outside of a school district in any system in the State of Montana. Now, if you want to put in "school districts", it's fine; but "several" might have problems with that word.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** If Mr. Davis would yield to a question?

**DELEGATE DAVIS:** Mr. Martin, I yield.

**DELEGATE MARTIN:** Isn't it true that, under the foundation program now, that within the counties there is what you might call inequitable distribution?

**DELEGATE DAVIS:** It depends on how you use the word "equitable". They distribute money within the counties on an ANB basis so each person gets the same per ANB. But in a district that's only got 90,000 valuation versus a rich district that got 800,000, it's grossly inequitable. So it does have to be some other basis of equity in there.

**DELEGATE MARTIN:** In other words, if you have a district that has a railroad running through it, then you have a district that doesn't have a railroad, the district that doesn't have the railroad gets more—a larger share of the county equalization fund, is that right?

**DELEGATE DAVIS:** Well, the first thing, if you've got a railroad, you don't need much else. (Laughter) That's as far as valuation is concerned. I'm not too sure I can answer that accurately. If you have a railroad, of course, you have a great deal of a valuation, but you could have another district without a railroad that could be bigger and have more. So I couldn't really answer it on just that set of facts.

**DELEGATE MARTIN:** Well, that has been—that was the real purpose of the foundation program, as I recall it and as my understanding of what it amounts to. And the point I'm getting about—getting at is I think that the school system of Montana needs the school districts and needs the school officials that would make them a part. And I can't see why the opposition to this.

**DELEGATE DAVIS:** Mr. Martin, to clarify a thing, if I could answer your question, it seems to me that we're now on the same side. Everybody's agreed to your amendment, so let's vote and get something else.

**CHAIRMAN GRAYBILL:** Mr. Davis, will you yield to a question from the Chair?

**DELEGATE DAVIS:** I'll yield, Mr. President.

**CHAIRMAN GRAYBILL:** When you say "to the several school districts", is there any sense in which that can mean the present school districts?

**DELEGATE DAVIS:** It seems to me that it'll have to be to the school districts that exist at the time the distribution is made. Your school districts are changing all the time throughout the state, like consolidation, annexation or abandonment.

**CHAIRMAN GRAYBILL:** Very well. Is there other discussion?

Mr. Harbaugh.

**DELEGATE HARBAUGH:** I'd like to ask a question of Mr. Martin. How do you interpret the word "several"? Do you interpret the word "several" to mean each?

**DELEGATE MARTIN:** No. I think that we could interpret this last sentence as a duty of the Legislature. It's a legislative mandate; it isn't anything else. And the Legislature could do whatever it wants with that. If we're going to have consolidation of districts as we do now, you wouldn't have several school districts. If you recall, the Peabody Report some years ago advocated that there only be one district in each county, and that could happen by legislative action.

**DELEGATE HARBAUGH:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** I think his answer helps me some. At least if "several" does not mean "each", we're making some progress. The concern of the committee is not to try to deny the local school district any autonomy. It is not a subversive plot to take school districts out of the Constitution. We simply are trying to free up the constitutional language here in such a way that the Legislature can, in an equitable manner, give funds to school districts which need it. Now, if we give, on a flat grant basis, money to every district, we upset the applecart of equality. If we give money on the basis of equalizing to those which need it because they have low evaluation, then we can equalize. This is the only reason that we have deleted this language.

**CHAIRMAN GRAYBILL:** Very well.

Mr. Champoux.

**DELEGATE CHAMPOUX:** You know, I'd be remiss if I didn't ask Mr. Martin this question. Mr. Martin, do you feel, under this, that some school districts would not get equalizing funds?

**DELEGATE MARTIN:** No.

**DELEGATE CHAMPOUX:** Do you feel that everyone, then, would get some funds even though it was unequal within the district?

**DELEGATE MARTIN:** I think that under the present foundation program, there could be equalization. I think that the way this is worded in this section, it still would be up to the Legislature to do that. And when we're speaking in terms of how we're going to distribute funds, we've got to recognize that we have implemented the powers of the Legislature, given them an opportunity to meet more often, developed more committees, and to work out the program. I would say that with this amendment, you can work it out in good shape.

**DELEGATE CHAMPOUX:** Well, my only answer to that, sir, is if you read Billings' study, the question is, "Why do we then have a variation of 10,000 to 1?" Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Martin's motion to add the phrase "to the several school districts of the state" on line 19, Section 1, sub. 2. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. So many as are in favor of that motion, vote Aye; and so many as are opposed, vote No. Has every delegate voted?
(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** Very well, 44 having voted Aye and 41 having voted No, the Chair says that the amendment carries. I think it's obvious from the vote, however, that we don't all understand what we're doing. I'm sure I don't, if the rest of you do. Very well; it's passed. Very well. Mr. Artz, you have an amendment. May the Chair read it? Mr. Clerk, will you read the amendment of Mr. Artz.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 1, subsection 2, page 3, line 17 through 20, by deleting the following language—by deleting the last sentence: 'It shall be the duty of the Legislature to provide by taxation or other means and to distribute in an equitable manner to the several school districts of the state funds sufficient to insure full funding of the basic public elementary and secondary school system'." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Artz. We have now amended the last sentence. Do you intend to delete the part we just put in, too?

**DELEGATE ARTZ:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Mr. Artz's amendment has the effect of deleting the sentence on line 17 to 20, including the part we just put in.
Mr. Artz.

**DELEGATE ARTZ:** Mr. Chairman. When Mr. McDonough brought up his original motion to delete both sentences, I had mixed emotions because I certainly did not want to eliminate libraries; I did not want to eliminate vo-techs or the university system. But when Mr. McDonough worries—and I worked with him on Revenue and Finance for a long time—about what this last line could do, I get very worried. Now, this thing has been discussed fully, and that's all I have to say. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Well, I just rise to say that it hasn't been discussed nearly as fully here as it was in the committee. And the committee is pretty firm about its feeling about this last sentence. I ask you to vote against the amendment.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Artz's—
Mr. Nutting, are you up?

**DELEGATE NUTTING:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE NUTTING:** Just one moment. I think there's a little misunderstanding on what "full funding of the foundation program" means. Now, the foundation program is based on three principles. First, you have a basic levy that is throughout the state. Next, the amount of money that the Legislature has by other means, other than property, normally, is offered to equalize the program throughout the state. If you want more than that, then there are voted levies. Now, we're talking about 40 mills, but 40 mills is merely the figure set by the Legislature. So to fully fund the program, the Legislature can take the money that they have available from other sources—let's say it's 40 million for the biennium—and if they can't fully fund the program, they don't have to add a dollar from the state level. All they have to do is increase the mill levy on the local level. The basic level—levy can go up from 40 to 50 to 60, whatever it needs to be, and the program is fully funded; there hasn't been one more dollar come in from state funds. But I think we should understand that when we talk about full funding that it doesn't mean that there will be more money available from the state level.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**VICE PRESIDENT BROWN:** Mr. Chairman. I rise in support of Mr. Artz's motion. While we're discussing Mr. McDonough's motion, I went through all these other constitutions in our blue and white book. They're all very simple in this particular area. The model constitution is the same way; the North Dakota Constitution—and I do like it—is the same way. And this will allow complete flexibility by reason of any change in the federal laws or the Constitution. And this is legislative, and we've been arguing for 3 hours and showing why it is legislation. So I certainly wholeheartedly endorse this motion.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman. May I ask Mr.Nutting a question, please?

**CHAIRMAN GRAYBILL:** Mr. Nutting?

**DELEGATE NUTTING:** Yes.

**DELEGATE BABCOCK:** In this section, it doesn't say to fully fund the foundation program, does it?

**DELEGATE NUTTING:** No, it doesn't, but that's been the discussion on the floor—is the full funding of the basic education.

**DELEGATE BABCOCK:** Well, this wouldn't provide the same type of funding then, would it?

**DELEGATE NUTTING:** The discussion has been that it would be based on the foundation program.

**CHAIRMAN GRAYBILL:** Very well. The issue is on whether or not to sustain Mr. Artz's amendment, which has the effect of deleting the last sentence of subsection 2 of Section 1.
Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President. Would Mr. Champoux yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I feel like Wade Dahood. Yes, I'll yield. (Laughter)

**DELEGATE JACOBSEN:** Now, we all know that the school foundation program has for many years fallen short of the 80 percent—of the hundred percent of funding promised in our present law. As Mr. Nutting said, this could be increased and we could have fully funded this, but it would come from the same source, taxes. Property owners must always pick up the difference in special levies. Now, have you considered how the Legislature will raise the cash to fully fund this foundation program?

**DELEGATE CHAMPOUX:** Oh, boy. Yes, we did; but we threw it to the Mitchell Gang. In other words, when we started out with this, the committee was faced with a very obvious fact, and that is that the state—the Legislature had not adhered to its—the constitutional mandate, nor to its own Legislative Article, which is the foundation program. And if we accept the amendment that's being proposed, we're going back to that situation. Now,what we tried to do was to attempt to make it so that the Legislature would have to—maybe they'll avoid it again, I don't know. Now, as to the method of financing, we want to leave it flexible enough so the gentlemen over in the Mitchell Building would be able to develop a scheme for financing. No, we didn't—there's no way that we developed a specific system to finance it.

**DELEGATE JACOBSEN:** Thank you, Mr. Champoux.
Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** You know, we're putting more and more burden on this Legislature every day. Everything we do is legislative. Now, why don't we give the Legislature an answer to the question we're talking about here and—in the funding of our schools? Why don't we consider a 2-percent sales tax, a general sales tax by the Legislature, to fully fund the school foundation system and reduce property taxes accordingly? There's the answer. It takes the burden off of the Legislature.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. May I take a shot at that last question of Mr. Jacobsen's?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE DAVIS:** It's a thought that we discussed in our committee, whether we're right or wrong, this—if the Legislature establishes a program, whether you call it a foundation program or any other program, that to establish a basic educational course in your primary and secondary level, it's going to take so much money.

They say the local people will put in so much by whatever way they want and the state will put in so much. Our full funding intends, hopefully, that the state says, "We've got this priority. We owe so much to these schools out of this 2 million—200 million dollar budget. Education has got a commitment—we've made a commitment to that." So instead of when they get to the end of the road and they spend their 2 million, instead of taking it, deducting it from education and saying, "We're going to build a new building here or there", they're going to say, "We haven't got the money to do that, because we've still got to fund the basic education program—so they've got that in their budget. So when they run short at the end, they can't take it out of education. And this is just basic for primary and elementary education. So, if that helps the explanation—but that's the way we discussed it, and that was our hope—that it would move this up as a priority and say, "Well, we'll give education, when we get through at the end, what's left"—say "We've got to fund whatever our commitment is and if something else doesn't get it, that's their tough luck, because that's a lower priority."

**CHAIRMAN GRAYBILL:** Mr.—wait a minute—now, wait a minute until you get the floor.

Mr. Jacobsen.

**DELEGATE JACOBSEN:** Why not, Mr. Davis, a direction to the Legislature to set a—up to—say, a maximum of 2-percent sales tax for the benefit of the schools? And if there is money left over, give the property owners some relief. The property owners are sick and tired of continually paying. They're failing to meet these things. They don't—the bond issues and so on are failing all the time. We've got to pass it. We could do it right here. We have the power to do it and direct the Legislature to put in a sales tax for school systems, period.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** We just defeated that—the people down in my county and the rest of the state—two to one; so you might put that in the Constitution, but you might save the rest of the money for this Convention and go home if you're going to put that in. People have spoken to that question very firmly. But that's not really the point. The point is you shouldn't tie in a constitution any method of financing. We've got to have a basic education program. How they might finance it or fund it this year or 10 years from now, or 50, would be entirely different. But it's got to be flexible, so we can't tie in a method. I mean, that would be my sincere answer on it.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President. Would Mr. Champoux yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I yield.

**DELEGATE HABEDANK:** Mr. Champoux. In connection with this section, you have provided for a great deal of leeway on the part of the Legislature toward full funding of education. I am wondering why you omitted, before the last line on page 23, following the words "full funding", the words "of the state's share of the basic public elementary and secondary school system".

**DELEGATE CHAMPOUX:** Well, I just—we just never thought of it. That never did come up in the committee, if that's what you mean. Is that your point?

**DELEGATE HABEDANK:** Yes.

**DELEGATE CHAMPOUX:** No, we didn't discuss that particular phrase, sir.

**DELEGATE HABEDANK:** May I ask Mr. Champoux another question?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I'll yield.

**DELEGATE HABEDANK:** Is it not a fact, Mr. Champoux, that when you're talking about full funding, you have allowed in this and anticipated that the state might—the Legislature might continue as they have in the past with the present foundation program; but the problem that you're facing is the fact that the state, year after year, does not meet its share of the foundation program and as a result, the thing that Mr. Nutting spoke about, the local taxpayer being stuck for the difference, results in inequities?

**DELEGATE CHAMPOUX:** Absolutely, sir.

**DELEGATE HABEDANK:** Would you object, then, from the standpoint of clarifying it in the minds of everyone what "full funding" means, to an amendment adding "of the state's share" in here?

**DELEGATE CHAMPOUX:** I wouldn't object, sir, if the other members of the committee wouldn't.

**CHAIRMAN GRAYBILL:** Mr. Habedank, you're going to be out of order if you try to amend a section that we're deleting.
Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman. I'm concerned that—and I guess we've all been there at one time or another—I'm concerned that when we reach a point of discussion that we sort of throw up our hands and say, "Oh, let somebody else think about it later", and we just want to leave it there. I think what we've put in this particular section, this sentence that Mr. Artz has asked to delete, is a bit of direction. It is not the specifying of details of how it's going to be handled, but it's a bit of direction in terms of both the nature of the distribution. And we already have income and interest coming in which has to be distributed, and there has to be a bit of direction in terms of how that's going to be distributed. The old Constitution stated it would be on a basis of a census, people between the ages of 6 and 21. We felt that was a bit tight in terms of interpretation as we looked ahead for years and years and years, and that it didn't belong. We simply say, "equitable distribution and taxation". Now, we have "the several school districts" in there so that there's no question about where it's going in terms of the elementary and secondary system, and it's not a great long legislative piece of statement, really. What concerns me is that if we don't get some direction, we do slip backward. And we, as a committee, spent many hours wondering: how do you nudge ourselves and our communities forward a bit in terms of their goals in education? And this seemed to be one way to take advantage of what's going on in other parts of the country and to be aware of what we might do without forcing anybody to do anything. It seems to me that it's so much easier to kill a good idea than it is to nurture it. And I'm afraid that just out of inertia and fatigue, we'll kill a good idea which is to look ahead, rather than to assume that we're cementing what has been a past pattern. We're trying to give a direction but leave it open for further growth. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** I'd like to rise again just to speak in opposition of the motion to delete and to say that I would be very much in accord with the suggestion of Mr. Habedank that we could amend the article as he suggested in the event the deletion fails.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President. I wish to resist this motion to delete this particular section. I can see the concern that the delegates have, but if we would leave it in there, I think it can be amended to not only express an idea of direction but to express in positive terms the direction. And at the expense of killing what I have in mind, or having you kill it, I would like to explain to you what I thought—conceived to be a very good idea to fund the state's share way back in 1952 when the constitutional amendment—

**CHAIRMAN GRAYBILL:** Now, Mr. Habedank—the Chair is willing that you explain your idea. You have explained your idea. The Chair is not willing to debate it. We're going to debate the deletion. You've explained that if it is not deleted, you would amend by adding those words. Now, otherwise, I want you to stick to the subject if you can, please.

**DELEGATE HABEDANK:** I felt the—

**CHAIRMAN GRAYBILL:** I can't see how some other plan that was adopted or talked about several years ago has any relevance to the deletion. If you can show me how it will, fine, but I do think that the Chair has some duty. Now, I've let everybody go on. We've talked education all afternoon. We must move on this. I think if we don't know enough about it, then we've got to think it through overnight; but I must insist now that you stay with the subject. If you can show me what you have is relevant, I'll be happy to let you talk.

**DELEGATE HABEDANK:** I couldn't show you what I have is relevant without making a statement.

**CHAIRMAN GRAYBILL:** You may make a statement, Mr. Habedank, but you started to describe another system of education.

**DELEGATE HABEDANK:** No.

**CHAIRMAN GRAYBILL:** Well, that's what you said. But go ahead. Explain it to me, Mr. Habedank.

**DELEGATE HABEDANK:** Under this particular clause, if it's left in and if it's amended to refer to the state's share, if the body will look at what they have done in the Revenue and Finance measure, what will automatically be done is what has been stated here previously by Mr. Davis; that by removing the 2-mill tax limitation, any shortage would then be funded.

**CHAIRMAN GRAYBILL:** Mr. McDonough, you may close.

**DELEGATE McDONOUGH:** I didn't make the motion, but if it's all right with Mr. Artz, I may close.

**CHAIRMAN GRAYBILL:** Mr. Artz says you may close. He doesn't want to close after you close.

**DELEGATE McDONOUGH:** I think, really, why the motion of Mr. Artz should be adopted is the discussion that's been had for the last hour, hour and a half. When you get into amending this section and this sentence, you think of a lot of things that should be in there or taken out. And you'll think of some tomorrow, and you'll think of some next year. And that's why it should not be put in this Constitution. It should be left—the first sentence of this section and the second sentence, if you so desire, as to the libraries. But what you're trying to do is develop a plan—or develop wording that means something now, and you'll think about it a half-hour later and you think of something else you want in. Really, all you want in this section is for the state to provide for an adequate, good, high-quality—if the word high is still in there, I guess it isn't—public school system. That's all you want, and that's all that should be in the Constitution. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** For what purpose do you rise, Mr. Harrington?

**DELEGATE HARRINGTON:** To answer Mr. McDonough's statement on—

**CHAIRMAN GRAYBILL:** I'm sorry, we've closed. Now, if you want a roll call, fine. We'll take a roll call vote. All in favor of Mr. Artz's motion to delete the last sentence of sub. 2, say Aye on the voting machines; opposed, No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Absent |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Absent |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Nay |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Absent |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |

| | |
|---|---|
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Nay |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Absent |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 50 have voted Aye, 38 have voted No.

**CHAIRMAN GRAYBILL:** 50 having voted Aye, 38 No, the last sentence of Section 1, subsection 2, is deleted.

Mr. Arness, you have an amendment up here that pertains to part of the section still remaining. Do you wish it read?

**DELEGATE ARNESS:** Please, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Will the clerk please read it.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 1, subsection 2, page 3, line 14 of the majority Education Proposal by deleting the words 'elementary and secondary'. Signed: Arness."

**CHAIRMAN GRAYBILL:** Mr. Arness proposes an amendment that takes out the words "elementary and secondary", so it says, "quality, free public schools".

Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman. The purpose of this motion is simply to make the language in the section conform to the stated purpose of the committee in preparing this section. As I understand it, it's their position that education is in a state of flux and that the system as we presently know it—with a grade school, high school, college level—may be changing and probably is changing. For that reason, we shouldn't freeze these forms of school that we have into the Constitution at the present time. There's reference later on to a third level, a higher school, which obviously refers to the University System. I've discussed this with the Chairman of the committee, and it's my understanding that he agrees that this language should be removed so that the system can be as flexible as possible. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there any discussion? Very well. The issue is on Mr. Arness' motion to strike the words "elementary and secondary" on line 14 of Section 1, sub. 2.

Mr. Woodmansey, do you want to discuss it?

**DELEGATE WOODMANSEY:** Mr. Chairman. I don't have these amendments before me; and this bothers me, because now we're making a decision to strike a section that we, in the committee, worked on for a period of time. I just am concerned that maybe we here, by doing this, may throw the doors open wider to some sort of thing that we don't want to do, or may not want to do at a later point. I would refrain from removing the terms "public elementary and secondary schools".

**CHAIRMAN GRAYBILL:** All right, now, Mr. Woodmansey, the motion is in writing at the Chair. And generally, when you people know them ahead of time—and that's why I urge you to get them in ahead of time. If they are important amendments, we have you—have them printed and spread. That, of course, becomes difficult on Saturday when we have no printer. I do then read them. If you don't understand them, I'm perfectly happy to go slow enough so that you can write them down. This is not a very difficult one. And if you'll take your book, Mr. Woodmansey, on page 3—

**DELEGATE WOODMANSEY:** I can see it, but here in a minute I'm to make a decision regarding this. And I resist it, and I will vote against it.

**CHAIRMAN GRAYBILL:** Very well—

**DELEGATE WOODMANSEY:** I don't foresee the impact. And it looks to me, under—maybe under the foundation program, we're going to finance the colleges of Montana. And I don't believe this is what the people of Montana want. I think that they don't mind financing the public schools through the state's foundation program, but I think there might be real resistance if this can happen by so removing these words here. Thank you.

**CHAIRMAN GRAYBILL:** Now, Mr. Woodmansey, you may argue the point. You did misstate it, and I want to clear up your mind on the matter. On line 14, the amendment takes out the words "elementary and secondary" and it leaves in the word "public", so that it says "The Legislature shall provide a basic system of quality, free public schools". Now, that's what it says now. We've added the word "basic"; we've taken out the word "high". And now, we're talking about the words "elementary and secondary". I don't mind it being debated, but if you don't understand the amendments, please ask and we'll make it clear. We can't print them all. You have too many, unfortunately.

Mr. Champoux.

**DELEGATE CHAMPOUX:** Sir, if I may, just to clear up a little point here. When Mr. Arness approached me and Mr. Aasheim, we were discussing it. If you look at the old article, it talks about the free common public schools. Now, in the old days, that meant up to the eighth grade. The question then became, why did we put in "elementary and secondary"? Well, this is what we're familiar with now. Of course, Mr. Arness' contention is, as I read it, what are we going to be calling them in the future? However, I felt that—or at least I thought that Mr. Arness was going to propose something else in terms of defining this, because I think Mr. Woodmansey's worry is a cogent one. What is the—what are the—what are we talking about when we talk about the free public schools? Mr. Arness might know. I don't know.

**CHAIRMAN GRAYBILL:** Mrs. Cain.

**DELEGATE CAIN:** Might I ask Mr. Arness a question?

**CHAIRMAN GRAYBILL:** Mr. Arness, will you yield?

**DELEGATE ARNESS:** I yield

**DELEGATE CAIN:** By this do you mean to imply that all schools—elementary, secondary, kindergartens, junior colleges, vo-tech, universities, colleges—all free? The word "free" is also a modifier.

**DELEGATE ARNESS:** I'm not sure I understand your question. Is that—

**CHAIRMAN GRAYBILL:** Well, her question, Mr. Arness, is that if you take those words out, you're making kindergarten and university free. Is that what you mean?

**DELEGATE ARNESS:** No, I'm not trying to do that.

**CHAIRMAN GRAYBILL:** Well, then you better think about your amendment.

**DELEGATE ARNESS:** Well, I think that the amendment does speak for itself. The—if we—

**CHAIRMAN GRAYBILL:** Very well. Let's put it and see what happens.

**DELEGATE ARNESS:** Thank you.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Arness' amendment to take the word "elementary and secondary" out of that first sentence so that it reads: "The Legislature shall provide for a basic system of quality, free public schools", please say Aye—a roll call is called for; all right—vote Aye on the voting machines; and those that say No, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Aye |

| | |
|---|---|
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Absent |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Absent |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Absent |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Absent |
| Drum | Nay |
| Eck | Absent |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Absent |
| Felt | Absent |
| Foster | Nay |
| Furlong | Absent |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Absent |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Absent |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Absent |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Absent |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Nay |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CHAIRMAN GRAYBILL:** Mrs. Robinson, for what purpose do you rise?

**DELEGATE ROBINSON:** Mr. President. I'm sorry, I punched the wrong button.

**CHAIRMAN GRAYBILL:** Mrs. Robinson, that won't help us much unless you tell us which way you voted. She wishes to vote No, is that right? Very well. Mrs. Robinson wishes to be recorded as No. The vote is taken.

What about you, Mr. James?

**DELEGATE JAMES:** Mr. Chairman, I wish to vote No, too.

**CHAIRMAN GRAYBILL:** Very well, Mr. James wishes to vote No. The vote is taken, but we'll—the journal will so—the transcript will so show. Will you please announce the vote.

**CLERK SMITH:** Mr. Chairman, 7 delegates have voted Aye, 75 delegates have voted No.

**CHAIRMAN GRAYBILL:** Actually the vote is 73 to 9, Mr. Clerk. And they may show on the roll but they may not change their votes. Very well; 73 having voted No and 9 having voted Aye, the motion is defeated. Now, the Chair would like to observe for the body here that you must be careful if you're going to play around with what the committee has done. I'm not saying that a lot of people haven't had excellent amendments this afternoon. The problem, Mr. Arness, was that you were about to make the universities free, and I don't think the rest of us were willing. And I think you must be careful. And you're wasting a lot of time when you write these amendments at your desks and don't know what you're talking about. So please be careful. Now, let's go on. Are there other amendments about Section 2—subsection 2? Very well. Members of this—

Mr. Hanson.

**DELEGATE ROBERT HANSON:** May I ask Mr. Harbaugh a question, please?

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE ROBERT HANSON:** I've been waiting until after all these amendments were over, but I've been listening and they've been talking about many studies. Did you and your committee come up with any figure as to how much—how many mills might be needed statewide to fund the program?

**DELEGATE HARBAUGH:** Mr. Chairman. We didn't think that was within our province to go into those kind of details. We did not.

**DELEGATE ROBERT HANSON:** Well, on the 15th of April, I know we're all going to be interested in some of these things.

**CHAIRMAN GRAYBILL:** Very well. Members of the body, you have before you on the recommendation of Mr. Harbaugh that when this committee does arise and report, after having had under consideration Section 1, sub. 2, as amended, that it recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted. Would the clerk read Section 2.

**CLERK SMITH:** "Section 2. Public school fund. The public school fund of the state shall consist of the proceeds of such lands as heretofore have been granted, or may hereafter be granted to the state by the general government, known as school lands; and those granted in lieu of such lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant, all estates or distributive shares of estates that may escheat to state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state; and all other grants, gifts, devises or bequests made to the state for general educational purposes." Section 2, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Woodmansey.

**DELEGATE WOODMANSEY:** Mr. Chairman. I move when this committee does arise and report, after having under consideration Section 2 of the Education and Public Lands Proposal, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Woodmansey.

**DELEGATE WOODMANSEY:** I'd just like to make a few comments regarding this section. This section is just the same as the present Section 2 of our present Constitution. Just a few comments taken from our report on page 14: "In securing assured sources of support for the educational system, the committee agreed that the constitutional protection should be supplied to the public school fund. Section 2 in the existing Constitution has provided this protection by itemizing the components of the fund and unequivocally specifying that these contributing funds should be used for education. The name public school fund which appears in this section is adopted as the name to be used consistently hereafter in the Constitution." Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there discussion of Section 2? If not, members of the body, you have before you on the recommendation of Mr.

Woodmansey, when this body does arise and report after having had under consideration Section 2, that we recommend it be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 3, Mr. Clerk.

**CLERK SMITH:** "Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested under the restrictions to be provided by law." Section 3, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Members of the body, Mr. Barnard will take Section 3, and he does have an amendment. Mr. Barnard, do you want to explain your amendment, or do you want the Chair to read it first?

**DELEGATE BARNARD:** The Chair can read the amendment.

**CHAIRMAN GRAYBILL:** Mr. Clerk, will you read Mr. Barnard's amendment.

**CLERK SMITH:** "Mr. Chairman. I move that Section 3 be amended by striking the word 'of' on line 8, and inserting in lieu thereof the word 'or' and by inserting a period after the word 'diversion' in line 8 and by striking the rest of the sentence. Signed: Barnard."

**DELEGATE BARNARD:** Mr. President. In reviewing the—

**CHAIRMAN GRAYBILL:** Just a minute, Mr. Barnard. Let's get this straight.

**DELEGATE BARNARD:** Yeah, okay.

**CHAIRMAN GRAYBILL:** Mr. Barnard's amendment has the effect of putting a period after the word "diversion" and striking the rest of the sentence. I don't see the "of". It looks like "or" in my book. All right, on page 4, it's already "or" and on page 13, if it's "of", change it to "or". Very well. Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. I move we disregard the question of "of" or "or" and leave that to Style and Drafting. I noticed that myself. It was different in two different places. I also move to insert a period after the word "diversion" and delete the rest of the sentence.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE BARNARD:** The reason for this is just to make it comply with the provisions and limitations we put in the Revenue and Finance Report.

**CHAIRMAN GRAYBILL:** Very well. All —Mr. Barnard has explained that this is to make it comply with what we've done in the Revenue and Finance section. All in favor of allowing the committee to make that amendment in the printed book here, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Very well. Mr. Barnard, it's done. Go ahead.

**DELEGATE BARNARD:** Mr. President. I move that when this committee does arise to report, after having had under consideration Section 3 of the report of the Education and Public Lands Committee, that the same be passed as amended.

**CHAIRMAN GRAYBILL:** Very well. Is there discussion? Members of the body, you have before you for your consideration Section 3, as amended, upon the recommendation of Mr. Barnard that when this committee does arise and report after this consideration, that we recommend it be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Will the clerk read Section 4.

**CLERK SMITH:** "Section 4. Board of Land Commissioners. The Governor, Superintendent of Public Instruction, Secretary of State and Attorney General shall constitute the State Board of Land Commissioners, which shall have the direction, control, leasing, exchange and sale of the school lands of the state and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law." Section 4, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section XI—Article XI, Section 4, of the Education and Public Lands Proposal, that it recommend the same and be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** This section remains practically the same as in the old Constitution, with the exception of one word. We had at first taken out—away from on—the board commissioners, but then with long deliberation we contained the same as in it. This section remains almost unchanged from the original Constitution. The board, composed of four elective officials—the Governor, Superintendent of Public Instruction, Attorney General and Secretary of State—serves an important function in supervising the management of the state's school lands and the income derived from these lands. The board, while operating under this constitutional provision, has well worked in the past and would appear to be able to do the same for the foreseeable future. The only change deemed desirable at this time is the addition of the word "exchange". We felt that to make this more workable and more flexible, that we inserted this word. The Enabling Act of 1889, which gave Montana certain sections of land for school support, was amended in 1932 to state: "Any of said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area", and so forth. Our Constitution has not been amended since this time. Since we are unable to provide for such exchanges as listed in the Enabling Act, we are now proposing that the Constitution contain a provision consistent with the Enabling Act to provide for exchanges of land, consolidate diverse holdings for better management. We hope to give the state the opportunity to exchange isolated tracts of land for equal holdings adjacent to or in the near proximity of other state lands so that the management of all state lands may be done with a limited effort and achieving the maximum benefit to the school fund. This is borne out when one can observe one tract of state land completely surrounded by private land. The problems of leasing, maintenance and access in these areas would be solved by allowing for this isolated state land to be exchanged. Requests from officials for this provision—these came from the men who run into this type of problem often in trying to achieve the maximum amount of the benefit to the people of Montana. Mr. Ted Schwinden, Commissioner of State Lands; Mr. Gareth Moon, State Forester; the Constitution Revision Commission recommended the deletion of the Public Lands Article. Due to statutory nature, House Joint Resolution Number 32 asked the Convention for multiple-use classification and the need for sound land management principles which encompass the inclusion of the word "exchange" to reach this goal. In summary, the committee feels that this provision, written in general terms yet providing for adequate safeguards, would allow for greater legislative flexibility in future dealings with the state lands to best meet the changing needs and interests of the people. This provision will enhance the benefits obtained from state lands, whether it be for the school fund or from state lands or other prospective purposes that these lands were granted for. In conclusion, let me reinstate the need for this provision to bring Constitution up-to-date and, consistent with the present amended Enabling Act of 1889, to consolidate diverse holdings for better management, requests from officials who operate under the existing cumbersome provision. For these reasons and other testimonies given to our committee, I support you for this change. And this is the reason why that we would put this word in here. As you know, we have some state lands, especially in the northeastern part of our state, which takes from 2 to 3 days to maintain—to go down there and revalue—reappraise this land. And they were—from all of our testimonies, it took probably 2 years in rental money before they got enough to pay for the—for sending this man down here to maintain this. The only change deemed—is "exchanged" to the list of activities within the board's power. This is what—the reason why we did this. The need for this has become evident in cases where the state has been prevented from making advantageous exchanges of land by the omission of this power from the present constitutional provision. The committee also considered revising the membership of the board, and particularly reducing the number of members to three by omission of the Secretary of State, but decided that the four constitutionally named elective officers were as important so as to direct control and that an even-numbered board requiring a majority of three for a decision would emphasize the principle of caution over that of expediency. Mr. Chairman, I hope you will support our majority vote.

**CHAIRMAN GRAYBILL:** Very well. Section 4—there's an amendment proposed by Mrs. Warden. Do you want it read from the Chair, Mrs. Warden?

**DELEGATE WARDEN:** Yes, please.

**CHAIRMAN GRAYBILL:** Very well. Will the clerk read Mrs. Warden's amendment.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 4, line 11, on page 4, of the Education and Public Lands Proposal by deleting the words 'Secretary of State'—end of quote. Signed: Warden."

**CHAIRMAN GRAYBILL:** Mrs. Warden wants to make an amendment leaving out the Secretary of State off the Land Board in line 11, Section 4.

Mrs. Warden.

**DELEGATE WARDEN:** Mr. President and fellow delegates. I hate to disagree with Mr. Conover and the Education Board, but I've worked on a great number of boards in the years that I've done public service, and I have yet to find that an uneven number wasn't more practical than an even number. And as a member of the Executive Committee, I felt that we should have a short ballot, and this may come to pass at another time. I think the Secretary of State as a record-keeper has statutory duties and that in order to provide for some future time, if there is a shorter ballot at some time, that perhaps it would be good to eliminate it. And I would strongly support a three-man board.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Davis.

**DELEGATE DAVIS:** Mr. President and fellow delegates. I'm afraid I have to take the responsibility for the Education Committee leaving the statute exactly as it was before. My argument before the committee at that time was, why delete it? Three is better—in this particular case, the only authority they have is exchange, sale, or lease public lands; and we said, in this case, we don't want them selling any anyway, so if they get hung up or deadlocked, that means they can't sell; so we decided to leave it in. But if you want it out, it really doesn't make any difference. As far as we were concerned, though, in this particular case, if they get deadlocked on selling something, well, let them stay deadlocked; that means they can't go ahead and sell it. We want to keep the lands in the state. We don't want to restrict them from selling it, but we want it to be done with the greatest deal of caution. So if they get deadlocked, we would be perfectly happy. We're not trying to make it an easy function in this particular area.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. Delegate Davis says it doesn't make any difference anyway. I think when the Executive Committee talked to the Commissioner of Land and to the members of the—and looked into the matter of the Land Board, there were many of us, at least, that had the doubt whether it made any difference we had a board or not at all. And I think that we ought to consider this very seriously. I must say, and I can only speak for myself, that we spent several hours talking to the people involved, and we were very impressed with the fact that the real work is done by the Commissioner of Lands. This board met regularly once a month for about a half hour—that's what we were told by everybody—pretty much rubber-stamped what the Commissioner had already decided. The regulations were there about, you know, that the lands were inviolate, so there weren't many decisions. And that—this seems like a protection, but I wonder if it really is. And I can't help wondering if we ought not to talk about deleting. I'd be—rather hear some debate before I make that motion, but it seems to me that if we left it to the Legislature to design that type of board that would give us the protection that we need and not tie up our four chief state officers in a half hour meeting once a month that—to rubber-stamp the work anyway, we might be much wiser. I think we should seriously consider that.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. I would certainly support the majority report in retaining the Land Board, but I wish to disagree with my colleague, Carl Davis. He and I discussed it somewhat briefly, and I can appreciate that we should pay some respect, I suppose, for tradition and the past. But it just does not seem to me to be good business or good draftsmanship to have a situation where you can have a tie vote. I would never draw a corporate document in that fashion. I would never put together a business enterprise or a business organization where you're going to have a tie vote and force the courts, of course, to break the tie. In this situation, I suppose if you had a tie, you would have no action at all. I support Delegate Margaret Warden. I think it's a very sensible amendment. I think it's one we should adopt.

**CHAIRMAN GRAYBILL:** Mr. Woodmansey.

**DELEGATE WOODMANSEY:** I would like to make a couple of comments. I favor the recommendation of the committee. First of all, we have to remember that the State Land Commissioner is appointed by the Governor. We have the Governor on the board, and I feel that when we reduce this to a three-man board, we create a little bit more of the risk of having some of this land sold or done away with in some manner where the public schools of the state might be cheated. I don't believe in selling this land, and I don't believe anyone else does unless it's not economically feasible to keep them. But this land is a very valuable thing, and there are many people in this state who would like to get their hands on this land. And I don't think we should forget that. And just because we have four members on the board, I don't feel it's necessarily bad. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I support the position of the majority report. I think that we should have perhaps five on it if we have to have an uneven number, rather than four. They are elective officers. They possibly will be members of opposing political parties. They will all be watching each other, and I'm in favor of having them watch one another. This land is very valuable, as Delegate Woodmansey pointed out. I pointed out here on this floor a few days ago money that is coming to the state from one section of land down in Johnson-Pemberton land, of $9 million in the next 8 or 9 years. And this isn't any chickenfeed.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President. I have here a recommendation of the Montana School Boards Association, and they recommend that Section 4 be included without an amendment, and that includes that the Governor, Superintendent of Public Instruction, Secretary of State, and Attorney General shall constitute the ex officio members of the State Land Board. They urge the adoption of this.

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman. Would I be out of order if I gave a few comments of the valuation of our land and investments?

**CHAIRMAN GRAYBILL:** Well, can you tell me how it applies to whether or not we keep the Secretary of State on the board?

**DELEGATE CONOVER:** Well, I'll be just—the reason why, they would probably make up their mind if they figured they need three or whether they need four or five.

**CHAIRMAN GRAYBILL:** Well, go ahead and do so briefly then, Mr. Conover.

**DELEGATE CONOVER:** Fellow delegates. As you know, our public lands constitute five-point million acres, or pretty near 6 percent of the total land area of the State of Montana. The present value of this land is appraised at $114 million-plus. The interest in income alone from these state lands amounted to $10,531,000 for the fiscal year of 1970. It also should be noted that 90 percent of the receipts belong to the public school fund. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. I support the amendment of Delegate Warden. I feel that the removal of the Secretary of State is admirable. If we really want to have a large board for controlling this particular situation, we might turn it back to the Legislature. But I think that the board—as indicated, the three members would be desirable to four. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The question is on Mrs. Warden's motion to delete the Secretary of State from the State Land Board.

Mrs. Babcock.

**DELEGATE BABCOCK:** I'd just like to point out that occasionally a Governor might be out of state, and if you eliminate the Secretary of State, you'd still have only two people acting on the Land Board.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. Our committee also was involved in considerable study on this—on the public lands situation. And I certainly wouldn't—will not support any amendment to decrease the number on that board.

**CHAIRMAN GRAYBILL:** Mrs. Warden, do you want to close?

**DELEGATE WARDEN:** I just want to—

**CHAIRMAN GRAYBILL:** Oh, Mr. Woodmansey, do you want to speak?

**DELEGATE WOODMANSEY:** I would just like to make one further comment. I'm sure many of you are aware—a short time ago, when you had a two-to-two tie on the board. It regarded some state land in the Lincoln area. And I think it was fortunate that we had a four-member board at that time. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Warden, do you want to close?

**DELEGATE WARDEN:** I'll just close. I think all the arguments have been said.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mrs. Warden's motion, which would eliminate the Secretary of State—the word "Secretary of State" from line 11 on Section 4. A roll call vote. So many as shall be in favor, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please take the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Absent |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Absent |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Absent |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Nay |
| Habedank | Absent |
| Hanson, R.S. | Nay |
| Hanson,R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Absent |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Absent |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Absent |
| Siderius | Nay |
| Simon | Aye |
| Skari | Nay |
| Sparks | Absent |
| Speer | Aye |

| | |
|---|---|
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Absent |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 25 delegates have voted Aye; 59 have voted No.

**CHAIRMAN GRAYBILL:** Very well; 59 having voted No and 25 Aye, the motion is defeated.

Mr. Cate, you have an amendment before the Chair. Would you like it read?

**DELEGATE CATE:** Please.

**CHAIRMAN GRAYBILL:** It's very short. I'll read it, Mr. Clerk. Mr. Cate moves to take the words "and sale" out of Section 4, on line 14. The effect would be to take away from the Land Board the power of selling land, but they may still control, lease, and exchange land.

Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, fellow delegates. When the federal government gave the State of Montana the federal—the state school lands, it was one of the greatest things that ever happened to our state. And the intention of the federal government in giving us those school lands was to allow the state to sell those lands to homesteaders and others for the purpose of financing the public school system within the state, the free public school system. Fortunately for the people of Montana, those lands were not sold in the manner that was intended by the federal government when they were granted to the State of Montana, and they have now become the greatest single asset that we have in the State of Montana. Now, presently, any citizen of the State of Montana can petition the Land Board for the sale of state lands. Then public notice of the sale is published in the newspaper; the land is appraised by the State Land Board; and if that individual meets the—he's required to meet the appraised bid—and the land can be bought by private individuals. What concerns me here is this: that I know of several situations where out-of-state corporations have purchased our state lands. And the manner in which they do it is this: they have someone who lives in Montana petition for the sale of state land and go in and pay the bid price and then, after he has purchased the land, that individual transfers the land to this out-of-state corporation. Now, it concerns me that some wealthy individual or some out-of-state corporation could at some time in the future move into the State of Montana and accomplish the purchase of a substantial portion of our valuable state lands, which would then be gone from the school fund forever. And I think this amendment would take away from the State Board of Land Commissioners the right to sell the land, but I see no great restriction being caused by the removal of that. They still have the right to exchange land. So if a particular section of land was needed for some other purpose and someone wanted to obtain it from the state, they could arrange for an exchange with the state, but the trust fund itself would remain intact for all time to come. And I recognize that at the present time the average sale of state lands is only about 400 acres a year. That's been the average over the last 5 years; about 400 acres a year have been sold. But as the demand comes for more and more recreational lands in Montana, as we become more populated, the demand for these state lands and the petitions of citizens to purchase them are going to become greater. And I think that we ought to afford this protection to this trust fund, which has turned out to be the greatest asset that our schools have. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. Will Mr. Cate yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Cate, will you yield?

**DELEGATE CATE:** I certainly would.

**DELEGATE BLAYLOCK:** Jerry, did you talk to Ted Schwinden about this?

**DELEGATE CATE:** No, I did not.

**DELEGATE BLAYLOCK:** Thank you, Jerry. I'd like to speak to it briefly. I'm as concerned as Mr. Cate and I appreciate his feeling on this about—that we want to preserve our state lands. But I have gone down and talked to Mr. Schwinden at times, and I think—I consider him one of the outstanding Land Commissioners we've ever had in the State of Montana. And there are times that arise when it is advantageous to the State of Montana and to our management of the trust lands to sell some of them. The last thing we want is to have them all sold off, but sometimes it is profitable to the State of Montana to sell them. So I think this would be too restrictive, if we were to strike those words. I would oppose the amendment to strike.

**CHAIRMAN GRAYBILL:** Mr. Johnson, you were next.

**DELEGATE JOHNSON:** Mr. Chairman. Would Mr. Cate yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Cate?

**DELEGATE CATE:** I'd be glad to, Torrey.

**DELEGATE JOHNSON:** Jerry, I only have one small piece of school land on our ranch. If it were sold, it would bring, oh, probably $50 an acre. Now, if that money was put into this trust that's inviolate, you'd never touch it—couldn't it be invested so it would bring more than a dollar an acre, the approximate lease that most of the school lands bring at this time? Wouldn't it bring 5 percent or better?

**DELEGATE CATE:** Well, I don't know what you're paying for your school land right now, but if that's the case, perhaps the lands aren't being properly managed. My concern would be to protect—Money, Torrey, is, in an inflationary society, is not a very stable thing. But in any society, land has traditionally been the standard of value. A piece of land today, even though it might be leased out for less than it's worth, is a stable commodity. And $50—if it could be sold for $50 an acre today, 10 years from now $50 an acre might be worth 50 cents. But the land is going to have its inherent value for as long as there's a demand for land, and there's going to be a demand for land as long as there's people. So I don't think I'd—at the present time, I would agree with you that that would be the effect. The money invested would bring more money back, but on the other hand, if we have inflation, that money isn't going to mean anything compared to what the land would mean in that event. I think the land is better security.

**CHAIRMAN GRAYBILL:** Mr. Johnson.

**DELEGATE JOHNSON:** Okay, thank you. Mr. Chairman. I wasn't trying to get somebody to sell me—or to have the state sell this particular piece of land, because, under the circumstances, and the way it has been, it's much cheaper for the person that's using the land to lease it than it is to buy it and pay taxes on it. This is the way it has been. But—and I wasn't trying to take any money away from the state. I was trying to point out that in a lot of cases, they would probably make more money if they had this money invested, maybe drawing a better rate of interest and so on. But as Mr. Cate pointed out, and thanks to him, I see what he means by holding onto it for another 10 or 15 years and it could easily be worth quite a little bit more. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Skari has been up.

**DELEGATE SKARI:** Mr. President and fellow delegates. I appreciate Mr. Cate's intentions there, but I think perhaps it's just a little bit too restrictive. I think we have insured that this land cannot be disposed of without very good reason by requiring a three-fourths vote on that. At times it may be profitable to sell, as Mr. Johnson pointed out. Some of these lands are small parcels and they're isolated and, at times, they bring very high prices. I know in my area they do; they're very seldom sold now. Also, landlords sometimes don't return the rental they should on these lands, for one reason or another. And sometimes, for this reason, it is better that the state dispose of them. There might be a few risks here, but I think that we should allow the State Land Board a little discretion there.

**CHAIRMAN GRAYBILL:** Mrs. Blend.

**DELEGATE BLEND:** Mr. Chairman. Would Mr. Cate yield to two points of information, please?

**CHAIRMAN GRAYBILL:** Mr. Cate?

**DELEGATE CATE:** I certainly would try to, Mrs. Blend.

**DELEGATE BLEND:** Jerry, the money obtained from sales does go into the foundation plan, right?

**DELEGATE CATE:** Yes, as I understand, it does.

**DELEGATE BLEND:** And a share of the mineral rights are retained, right?

**DELEGATE CATE:** I'm not sure about that. I think they have the discretion to retain them. All of them are, yeah.

**DELEGATE BLEND:** Thank you.

**CHAIRMAN GRAYBILL:** I'd like those in the chamber to be quiet, who are not talking, and I'd appreciate it if the group at the back would either go outside or sit down. I can't see who's up. Thank you.

Mr. Drum.

**DELEGATE DRUM:** Thank you, Mr. Chairman. I would like to oppose Mr. Cate's amendment for this reason: it is impractical for a State Land Commissioner to operate at full efficiency unless he has the ability, at certain times, to sell certain portions of the state-owned land. He would have to be able to do it in order to accumulate blocks of land. Exchanges, at some times, will be impractical. And I commend the committee for allowing the State Land Commissioner to operate more effectively. At the present time, Mr. Cate, it so happens that over a period of 15 years, I have leased a piece of state land along the Yellowstone River. It's about three-quarters of a mile of Yellowstone River land; it's a very nice piece of land. It costs me $5.14 a year to lease it, I think. And it's—my conscience bothers me every time I pay that bill. While I've been here in this delegation at the Constitutional Convention, I was contacted by the State Land Commission—would it be all right with me if they could sell that to the city of Billings for a park facility? And I said I'd be tickled to death to have the state to do that. As you know, the city of Billings is accumulating land in that area, and it, in the future, will become a very, very nice park area. Now, if your amendment is passed, it will take away the ability of the state to accumulate land, probably sell it to cities or to counties or to park systems or that type of thing. I would suggest that we leave the latitude that is recommended by this section in the hands of the Commission and depend upon the Legislature, which in the future—which presently limits the State Land Commission. They are very restrictive in the statutes as to how this can be handled, and I feel that we should give them this latitude and support the committee report. Thank you.

**CHAIRMAN GRAYBILL:** Very well. Mr. Cate, would you like to close?

Mr. Davis, do you really want to talk?

**DELEGATE DAVIS:** Yes, I think I should, as Chairman of the Subcommittee on State Lands in this Convention and for the Education and Public Lands, much as I hate to. We considered Jerry's position very seriously because we're opposed to sales. We talked about making that prohibition. I woke up in the middle of the night and remembered I'd worked 20 years on the Clark Canyon Dam in Beaverhead County. They formed an irrigation district, and they had many acres of state land. If the state hadn't been able to sell that, we couldn't have had the project, a great project for the State of Montana to preserve its water. So it is too restrictive if we limit it that way. And we all feel the same as Jerry does on it. But they've been a great guardian of this trust. I mean, their record is such that I think that you can feel confident they will not sell any lands unwisely. Therefore, I would oppose the amendment.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President. I'd like to speak in opposition to Mr. Cate's amendment. I would like to also correct some statements that's been made here. We have a couple small parcels of school land on our operation, and we certainly pay more per acre for those lands than the taxes would be on them. And I would also say that I wonder how Mr. Drum got by as well as he did. But I think this is one of the reasons why we have a Land Board. And they try to correct these situations, and they do have to have the flexibility to be able to trade lands or sell lands in such a manner that it would be beneficial to the educational system in Montana. And I think that if we put this restriction on them, we would certainly be putting a restriction on the future of the educational program in the State of Montana. Thank you.

**CHAIRMAN GRAYBILL:** Now, Mr. Cate, would you like to close?

**DELEGATE CATE:** Mr. Chairman. Would Mr. Davis yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Davis?

**DELEGATE DAVIS:** Mr. Cate.

**DELEGATE CATE:** Would your committee have any objection to adding, after the word "and sale"—adding the words "in its discretion", which would give the Land Board the right to refuse to sell?

**DELEGATE DAVIS:** In answer to that—

**DELEGATE CATE:** So that there's a specific provision to that effect.

**DELEGATE DAVIS:** Mr. Cate, we have a lot of statutory law and policy on this.

**DELEGATE CATE:** Right. I—

**DELEGATE DAVIS:** And it is in their discretion now, and they exercise their discretion wisely, I think.

**DELEGATE CATE:** That's a judicable issue which is, in fact, presently pending down here in the local district court, whether or not they have discretion. And there's a serious question whether or not they have discretion. And if we put those words in there, then we'd be sure that they had the right to refuse to sell.

**DELEGATE DAVIS:** Well, I couldn't speak for the members of the committee, but I personally would object to making any change in the report as it now stands.

**DELEGATE CATE:** Mr. Chairman, fellow delegates. I would have to disagree with Mr. Drum that the city of Billings would be prevented from selling this land to him or providing this land for a park, because all the city of Billings would have to do is to go out and buy some land to exchange with the Land Board for that land. The same situation applies in all these other cases. And for the rural people who are concerned about leasing school lands, well, it looks to me like they'd be getting a bargain forever here by eliminating this right to sell, because they'd never be forced to buy it. Thank you.

**CHAIRMAN GRAYBILL:** The question is on Mr. Cate's motion to strike the words "and sale" on line 14 of Section 4, taking away from the Board of Land Commissioners the right to sell lands but leaving the right to control, lease and exchange lands. Mr. Foster wants a roll call. So many as shall be in favor of that motion, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please take the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Absent |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Absent |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Absent |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Absent |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |

| | |
|---|---|
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Absent |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmaney | Nay |

**CLERK SMITH:** Mr. Chairman, 10 have voted Aye, 77 have voted No.

**CHAIRMAN GRAYBILL:** 77 having voted No and only 10 having voted Aye, the motion fails.

Mr. Studer, you have a motion before the Chair. Do you want it read?

**DELEGATE STUDER:** Yes, please.

**CHAIRMAN GRAYBILL:** Very well.
Mr. Studer.

**DELEGATE STUDER:** Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** I didn't write it just right. I was in kind of a hurry. I really should have omitted the word "and" in front of "Attorney General" and put it behind it, in front of "State Auditor."

**CHAIRMAN GRAYBILL:** Mr. Studer has an amendment which proposes to add the words "State Auditor" to the list of people on the Board of Land Commissioners. If you add it after Public—"Superintendent of Public Instruction", you don't need another—to move the "and", Mr. Studer. So his proposal is to add the words "State Auditor" after "Superintendent of Public Instruction".

Mr. Studer.

**DELEGATE STUDER:** Mr. President. The only reason I done this was because I don't really like to see a four-board—four people try to decide on anything and go into a hassle over it and leave it up in the air for a great length of time. I don't see where adding another man wouldn't cure that problem, and with that, that's all I've got to say.

**CHAIRMAN GRAYBILL:** Is there any discussion?

Mr. Dahood.

**DELEGATE DAHOOD:** Well, Mr. Chairman, this guarantees the protection that some of the delegates were talking about. Not even the Supreme Court would have an even number of people deciding the matters in controversy that are absolutely important to the liberty of the individual citizen. And it certainly is not good business. It's not good construction for any type of organization or board to have an even number on it. Delegate Studer's amendment is going to cure that particular vice, it's going to give greater protection to school lands, it's going to be more businesslike, and it's going to be more sensible. And I suggest that the amendment should be adopted.

**CHAIRMAN GRAYBILL:** Is there further discussion? Very well, the issue is on—

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. We could do the same thing by just merely putting forth to the—in our record that we would suggest that the Land Board from now on only have the Chairman vote in the case of a tie. Now, if you have a four-member board, you would never have a tie, because there'd be two for it and one against it. If you had one member absent, you'd have two members, and he'd break the tie if they were opposite each other. So there really is no object in having a five-member board if you went along with that idea. It's very simple.

**CHAIRMAN GRAYBILL:** Is there further discussion? Very well. The issue is on Mr. Studer's motion to add the State Auditor to the Board of Land Commissioners on line 11, after "Superintendent of Public Instruction". So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. So many as shall be in favor, vote Aye; and so many opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the vote, please. No, it's not a roll call, so never mind. 48 having voted Aye, 40 having voted No, the motion prevails. Members of the committee, are there—is there further discussion of subsection 4, the Board of Land Commissioners?

Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President. I've been trying to do a little fast arithmetic here while we were discussing this question. It seems to me we're overlooking a real bonanza, and I think we're treating it in a rather cavalier fashion. The statement was indicated here that we have 10,531,000 acres of land and our annual income is around $5 million per year. That comes to two bucks an acre. I don't know of much land around my part of the country that you can buy for much less than $40 at the present time. Just last fall, I sold a 160-acre tract about 30 miles north of town that was practically all gumbo, and I got 40 bucks an acre for it. A couple of years ago, I sold a 160-acre tract in the Bear Paw Montains. It was on top of a mountain. I sold it to the Henderson Ranch, and I got $50 an acre for that. This is land for people out of the state. I would submit that $40 an acre is probably the rock-bottom price for land in Montana at the present time, and that much of this school land is probably worth a hundred fifty to two hundred dollars an acre. But let's take just the $40 per acre figure. And if we sold all of the land—now mind you, I'm not advocating this; I, too, want to hang onto the land, but I want to see it managed. If we took ten and a half million acres of land and sold it for $40 an acre, that would produce $420 million. And if that were invested at 5 percent, which is a conservative figure at this time, that would produce an income of $21 million per year against the 5 million that we're getting. Now, I used a basic minimum figure of $40 per acre. And I submit that if the land were more realistically valued, it would probably be sold for closer to a billion dollars, or twice what it is now—and even that's conservative—which would produce an income of roughly $50 million per year to the State of Montana. Against this, we're getting 5. Now, there's something wrong. I don't know where it is. And I'm simply throwing this out to inquire of the committee if they took this matter up, or if the Finance Committee took this matter up. This is a chunk of dough worth going after. I think we could easily get $21 million a year out of this instead of the measly 5. Now, they might say that,well, we don't want to hire all those people to go out and check these crops, or we don't want to go out and hire all those people to go out and check land leases, or we don't want to hire these people to go out and check the return per barrel on oil land. But the truth of the matter is, there's an awful lot of money here that I don't think the State of Montana is getting. Now, I suppose this question comes up in the Legislature year after dreary year; but we're a Constitutional Convention, and we're sitting here setting up a commission that is entirely political. Every single one of those is an elected official, and under their direction, they hire a man. Now does that sound like a good deal to you when it looks like we're dealing with about $21 million per year at a basic minimum? Don't you think that we should think a little more clearly about this and perhaps give some thought to taking this matter out of politics entirely if we can? If we can. One thought that I have just offhand is putting this in the Public Service Commission. There is an organization that's not nearly as politically oriented as the Governor and the Auditor and all the rest. And perhaps they could hire a group of people to go out and investigate these things and increase the return substantially. Now, that's just one idea, but it does seem to me that the commission that we set up here in the Constitution is politically oriented, and that's probably one of the reasons why we're not getting the income we should be. I'm wondering if we shouldn't leave the whole thing out of the commission—out of the Constitution rather—and leave it up to the Legislature and let them see if they couldn't organize as nonpolitical a body as they could come up with to manage these lands.

**DELEGATE HARBAUGH:** Mr. Chairman, I don't know where Mr. Swanberg got his figures, but they are not anywhere nearly close to being correct. He says we have ten and a half million acres. Somewhere there's about 6 million acres that, apparently, the Public—the Education and Public Lands Committee overlooked, because we have less than 5 million acres of school land. And I think this simply shows that when we react to things off the cuff, how wide of the mark sometimes we come.

**CHAIRMAN GRAYBILL:** Is there further discussion?

Mr. Drum. Well, let's see, Mr. Conover was up. I'll come back to you.

Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman. I hate to do this to my fellow delegate in our Education Committee, but I'm going to have to correct both of you. The public land constitutes five million point eight acres that we have in the state school lands, and the income from those lands of 1970 was ten million, five hundred thirty-one thousand dollars and one cent. That makes the average paid value on this land of about $20 an acre. You want to remember that a lot of the state land today is basically up around the Fort Peck Dam. If you would put a cow on it, you'd have to give her a lunch bucket for her to go across it and come back, because she'd starve to death. (Laughter) I would like to see anybody here that would even buy a piece of land. Even if you put a price on it of five cents an acre or a penny an acre, there isn't a soul in here that would buy it. Now this is—these are the actual—State lands is appraised at $114 million-plus. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Now, Mr. Drum.

**DELEGATE DRUM:** Very quickly, Mr. Chairman, I would like to even correct Mr. Conover. (Laughter) In the State Land Department investments in 1970, the acreage was a net acreage of 5,287,000, of which grazing lands are 4,141,223.72; agricultural lands, in other words, wheatlands is about 500,000 acres. Now, my comment to Mr. Cate—where that this—put by injecting this word "exchange", it is going to allow the State Board of Land Commissioners to be much more effective in their management of these lands. It may break your heart to know that right now the average income on an acre of rangeland to the State of Montana is about between 18 and 19 cents per acre. If that were on the tax rolls, it would be bringing in something in excess of 20 cents per acre, somewhere in the neighborhood of 23, 24 cents on the average throughout the State of Montana. So actually, right now, if all of this land were given to the fellow who is leasing it and let him pay taxes on it, somewhere there would be more money coming in from it. The problem is, if you will look at the map in Mr. Schwinden's office—is each one of these sections that is owned by the state—or the school trust—it is Section 16 and 36, and it is absolutely impossible to manage land that is located in that way. The ranchers who have it now are not going to fence it. They are not going to allow someone to come in and use it if they are—if they don't wish them to, because they're not going to give them the right-of-way to do it. So the ranchers are going to be able to use this land from now on, and maybe they should if it fits into their ranch. But what I'm saying is that in order for the state to come up with a fair and equitable return on this land, they are going to have to have the ability to trade it around, perhaps with the rancher, perhaps trade it for more recreational land. A trade may be in order or maybe a sale may be in order as the one I described down in Yellowstone County, because Yellowstone County certainly is not going to go out and buy another piece of land to trade for this land. I don't think that is going to be agreeable with the state. So the wording of the present section is going to allow, I believe, the Board of Land Commissioners to be more effective. And we hope that in the future they will be able to bring this income up, because that is truly the purest form of tax relief. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bates, you were next.

**DELEGATE BATES:** Mr. Chairman, fellow delegates. I doubt that many of you really understand the problem of state land leasing. For many years we have leased state land. Now—this land was in the ownership of our family, and during the depression, this land was lost for taxes. We cannot buy it back. The state demands the interest on the money to be valued at what their income is now. This means that this land would now be sold at the—at a much higher going rate than is valuable, tillable land. Also, we must meet matching bids if we are to retain this land to farm. I would like to find some of this cheap rent-based land that some of you are talking about, because we find we are paying, on our state land, much higher rent than we are receiving from the private land—the place that we rent—lease. We must maintain, on the land that we lease, the buildings, the upkeep, the fences, all the other things that are necessary to maintain a ranch; while at the same time, the little farm that we lease out—we must, as the owners keep up this property. And I think this land must be maintained for our schools and for our children, and we must try to protect it; but don't think that the farmers are getting a deal, because they're really not.

**CHAIRMAN GRAYBILL:** The Chair has no motions ahead—before it except just Section 4. Now, we can continue to discuss this; but when you're finished, we'll go to dinner.

Mr. Siderius.

**DELEGATE SIDERIUS:** Mr. President. I think one of our biggest mistakes here is that we're not getting enough for our grazing lands. Now, the state charges 86 cents a month per animal unit, which consists of a cow and a calf. They charge from 86 cents down to 66 cents. Now, when we lease from individuals—when one private party leases to another, they get as high as $4 a month per animal unit. Now, that makes quite a difference in the grazing rentals. And I think that's where our biggest mistake is—that is, the state's biggest mistake is—and I would sure like to see that brought up to where it should be.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. We're going to have a Public Land Article that we're going to discuss subsequently. And there is quite a little material I know you'll want to know onwhat they're trying to do. But I wonder if we could defer that until we get to the Public Land, if it's possible. I certainly think everyone should have their say, but there's quite a bit they are trying to do statutorily; and I don't think we should get into that this evening.

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman, may I close?

**CHAIRMAN GRAYBILL:** You may close. (Laughter)

**DELEGATE CONOVER:** I have great respect for Jerry's motion that he wanted to make, because we thought of it, but it would be—it wouldn't be workable; it just couldn't be there. So I want to say very briefly that we—the article—or the section that we have here is practically the same as the old Constitution with only one word "exchange", and I hope that it will be of benefit for the future.

**CHAIRMAN GRAYBILL:** Very well. Now, Mr. Conover, we took care of that one, but we do need you to close on your article. But I think all we need to say is that—members of the body, you have before you for your consideration Section 4, on the recommendation of Mr. Conover, when this body arises and reports that it recommend the same be adopted as amended. All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** Section 4 is adopted.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move that the Committee of the Whole rise and report progress and beg leave to sit again.

**CHAIRMAN GRAYBILL:** Mrs. Babcock, for what purpose do you rise?

**DELEGATE BABCOCK:** Mr. Chairman. I rise for a point of personal privilege. I don't know if anyone has noticed, but we have a picture of the Vice President of the United States on the walls of this Convention Hall. It has been defamed, and it's been recorded on this machine all afternoon. And this tape will be used to show our children, and I don't think that's in good taste at all.

**CHAIRMAN GRAYBILL:** Very well. I wonder if whoever owns that picture will take it down. And if they don't, in the morning we'll have a vote to see if we can take it down. The motion was to rise and report. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Report progress, that is. Very well, Opposed?

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

**PRESIDENT GRAYBILL:** Will the clerk please read the title and signature of the committee report.

**CLERK SMITH:** "March 10, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 10 of the Committee on Education and Public Lands, recommend as follows: that the Committee rise and report progress and beg leave to sit again. Signed: Graybill, Chairman."

**PRESIDENT GRAYBILL:** Is there anyone who wants the entire report read?

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** Very well. So many as are in favor of the report of the Committee of the Whole, please say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** The Ayes have it, and so ordered.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I so move that we adopt the Committee of the Whole report. There are a couple of announcements.

**PRESIDENT GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman and delegates. The interns have asked me to announce that they are having a party at their house tonight. Kind of a—I think this is the beginning of final week if they were in school, so it seems kind of the time for a last fling. Their address is 1215 Peosta—at 8 o'clock; and they would like any or all of you to come. Thank you.

**PRESIDENT GRAYBILL:** Very well. Revenue and Finance, the meeting will only last 5 minutes but it will be in Room 437 on adjournment. Other announcements? Very well. All in—
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. I move we adjourn until Saturday, March 11th, 9:00 a.m., 1972.

**PRESIDENT GRAYBILL:** All in favor of adjourning till tomorrow morning at 9:00 a.m., say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** And so ordered.

(Adjournment 5:56 p.m.)

**March 11, 1972**
**9:10 a.m.**

**Forty-Third Day**

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** If you'll all rise, Father Arbanas will give us the invocation this morning.

**DELEGATE ARBANAS:** Good Father, we are working on education. Help us to do a good job. We pray for our teachers, that they may teach both how to make a living and how a life should be lived. We pray for our students who are in school right now, that they may appreciate the wisdom of the past, the responsibility of the present, and the hope of the future. Lord, grant each of us today that we may keep in mind that one bright-eyed, freckled-face, squirmy kid is of more value than any and all of our institutions and that our most joyful privilege is to help young people to grow and to be free and to inherit a world just a little better than the one our parents left to us. Amen.

**PRESIDENT GRAYBILL:** We'll take attendance this morning by voting Aye on the voting machines.

**CLERK HANSON:** Delegate Babcock, Delegate Choate, Delegate Cross, Delegate Felt, Delegate Foster, Delegate Harbaugh, Delegate Heliker, Delegate Holland, Delegate James, Delegate Johnson, Delegate Joyce, Delegate Kelleher, Delegate Loendorf, Delegate Payne, Delegate Rollins, Delegate Scanlin, Delegate Babcock, Delegate Choate, Delegate Foster, Delegate Holland, Delegate Rollins. Mr. President, may Delegates Roeder and Furlong be excused, please?

**PRESIDENT GRAYBILL:** Very well. Now list the absents once more, will you.

**CLERK HANSON:** Delegate Babcock, Delegate Choate, Delegate Foster, Delegate Holland.

**PRESIDENT GRAYBILL:** Very well. Take the attendance.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Absent |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Absent |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Absent |
| Furlong | Excused |
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Absent |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |

| | |
|---|---|
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Excused |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

**PRESIDENT GRAYBILL:** Mr. Clerk, Mr. Holland is present.

**CLERK HANSON:** Mr. President, 95 delegates present, 2 excused, 3 absent. [The journal shows 94 present, 4 absent, 2 excused—editor]

**PRESIDENT GRAYBILL:** Very well. The journal may so show. Order of Business Number 1.

**CLERK HANSON:** "Mr. President. We, your Committee on Style, Drafting, Transition and Submission transmits revisions of Report Number 7 of the Committee on Revenue and Finance. Signed: John Schiltz, Chairman."

**PRESIDENT GRAYBILL:** Very well. Revenue and Finance is before you and is placed on General Orders—the Style and Drafting Report on Revenue and Finance. Order of Business Number 2, Reports of Select Committees.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 3, Communications.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Number 4, Introduction.

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Number 5, Final Consideration.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 6, Adoption.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 7, Motions and Resolutions.

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Order of Business Number 8, Unfinished Business.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 9, Special Orders.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 10.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders to handle Proposal Number 10, on Education.

**PRESIDENT GRAYBILL:** The motion is to move this Convention into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** So ordered.

(Committee of the Whole Delegate Graybill, Chairman)

**CLERK HANSON:** "The Style and Drafting Committee Proposal Number 5, having been duplicated and placed on the delegates' desks on the 9th day of March, 1972, at 9:00 a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules, March 11th, 1972. The following committee proposals are now on General Orders: Education, Public Health, Local Government, General Government, Style and Drafting Reports Number 5, 6 and 7." Mr. President.

**CHAIRMAN GRAYBILL:** Very well. I think the point of Mr. Eskildsen's motion was that although the rules require that we take up Style and Drafting first, we—without objection we'll pass Judiciary on Style and Drafting and continue with Education this morning. Is there objection? Very well. We'll consider—continue with Education. Will the clerk please read Section 5 of Proposal Number 10, the Education and Public Lands Committee proposal.

**CLERK HANSON:** "Section 5. Public school fund revenue. Ninety-five percentum of all the interest received on the school funds of the state and 95 percentum of all rents received from the leasing of school lands and of all other income from the public school funds shall be equitably apportioned annually to the public elementary and secondary districts as provided by law. The remaining 5 percentum of all the interest received on the school funds of the state and the remaining 5 percentum of all the rents received from the leasing of school lands of all other income from the public school funds shall annually be added to the public school fund of the state and become and forever remain an inseparable and inviolable part thereof." Mr. Chairman, Section 5.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration the new Section 5 of the Education and Public Lands Article, that the same do pass.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** The proposed Section 5 is a shortened and revised version of Section 5 of the present Constitution. The intent of the provision—is [to] constitutionally protect the interest and income of the public school fund—is important. However, in the particular restrictions as its distribution to the schools are considered obsolete in light of present conditions. The language concerning the portions of the—distributed and which is to be reinvested remains the same as in the present Constitution. The methods of distribution previously specified are replaced by a general phrase, "shall be equitably apportioned annually to elementary and secondary schools as provided by law". The replacement language provides the desired flexibility to the Legislature to develop the school financing programs in tune with current necessities. Particularly relevant to the change is the trend across the nation, in accordance with recent court decisions under equal protection doctrine, to provide more equitable school financing systems. The flat grant type of aid provided under the old method of distributing income and interest to the school districts on a census basis is clearly antiequalizing under the standards discussed in the commentary in Section 1, but the—specifying only that the distribution must be equitable—and the new language allows the Legislature to determine the type of distribution which will attain this goal. Restrictions in the form of specified districts, age, and school terms which may have been applicable at the time of writing an 1889 Constitution are no longer meaningful. Rather than attempt to apply new restrictions more in keeping with the contemporary school system, the committee's determined that it's preferable to allow for changing needs as interpreted by the Legislature by designating only a broad standard; namely, "equitably apportioned—as provided by law". A further element in the distribution system authorized by the existing provision is the specification that the interest and income money is distributed to the several school districts. This has been interpreted in the past to mean that funds deriving from this source be granted only to elementary schools, presumably because elementary schools are the only public schools in existence at the time when the provision was written. In keeping with this intention to expand legislative possibilities in educational finance, as discussed in the commentary on Section 1, the committee has replaced the phrase "several school districts" with "public elementary and secondary" schools. This would change the existing distribution system to include high schools as recipients of interest and income money. The immediate results is the—anticipated by the office of Superintendent of Public Instruction to result in a net saving of the administrative costs to the state. We have felt through this change that we have made a much more equitable section to the Constitution. Now, some actions taken in Section 1 yesterday may not be actually applicable to this. In other words, we've gone back to "several school districts". But the committee feels that this is very important. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Is there discussion of Section 5?
Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. Chairman. I had a delegate proposal in on this section. The committee has incorporated the—in different langauge, but the idea is there. I commend the Education Committee for changing this so that we get away from the old distribution formula to—where it was distributed to the students—or the children of a district between the ages of 6 and 21. This really didn't work out in these later years. It was—as Dan said, it might have been good for 1889, it certainly is no longer reasonable to have such language in. And I think that this is a great improvement and will give a great deal more flexibility on the distribution of these—income from these school lands. I support the Education Committee on this.

**CHAIRMAN GRAYBILL:** Mr. Martin, are you up?

**DELEGATE MARTIN:** Yes, sir. Do I have an amendment up there?

**CHAIRMAN GRAYBILL:** Not to 5, that I know of.

**DELEGATE MARTIN:** If not—

**CHAIRMAN GRAYBILL:** You've got one to 8.

**DELEGATE MARTIN:** There's one on the same page as the one that was on yesterday.

**CHAIRMAN GRAYBILL:** Oh, well. All right. The clerk will read Mr. Martin's amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 5, page 17, of the Education and Public Lands Committee Proposal Number 10, as follows: at line 5, page 17, by adding, between the word 'to' and the word 'public', the following words—quote: 'the several school districts of the state for'—end quote. Signed: Martin."

**CHAIRMAN GRAYBILL:** The phrase to add is "the several school districts of the state".

**DELEGATE MARTIN:** Mr. President.

**CHAIRMAN GRAYBILL:** Just a minute till we get it down, Mr. Martin. "Several school districts of the state for"—that phrase goes—if you're on page 4, it's on line 24, after "annually to the"—"several school districts". So the sense of the sentence reads, the money will be distributed—equitably apportioned annually to the several school districts of the state for public elementary and secondary school districts.
Mr. Martin.

**DELEGATE MARTIN:** Mr. President. Delegate Champoux was good enough to give me a book yesterday. He said my education had been neglected. And it's a working draft of a study of basic educational program funding methodology in Montana. I'll be very brief. On one page of it, it says: "The sources of revenue for school district general fund budget support for 1971 and 1972: general fund revenue, 134.8 million; the foundation program, state and county, 87.2 million, of which—and which included a permissive levy of the districts of 21.59 million and a voted levy of the district of 25.47 million." I think it evident from that that the school districts have a real part in financing education. And for that reason, I think that the amendment should be retained.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Martin gets a "C" for the day. He didn't read far enough. (Laughter)

**CHAIRMAN GRAYBILL:** That's better than "F", Mr. Champoux.

**DELEGATE CHAMPOUX:** Yes, it is, sir. (Laughter) Fred, you're right. This is correct. I absolutely believe that the local school district is a necessity in this whole process. The problem is with that word "several", though. Now, if I may just briefly go over that point again. You see—because—if you read that report further, you'll find out that in many districts of this state, there is inequality in terms of the amount of money to be spent. Now, as Mr. Harrington noted on the business of the flat grant, a flat grant simply means a block of money that's apportioned to each individual district. Now, if the district is ahead in terms of money to begin with, when you give them the flat grant from the state, it even throws it further out of balance. You see that? So if it's unequal to begin with and you give them that flat grant, then it's going to be even more unequal. Now, when we use this—the term "several districts"—and why I asked Fred the meaning of that yesterday was to attempt to get on the record whether we mean by that every district, every district. Now, if you lawyers can convince me that the courts will say that does not mean every district, I will accept the word "several". However, if it can be open to contention, then we're in trouble. I will agree to the school districts any day, Fred. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Martin, the Chair would like to inquire of you. You're aware that Mr. Champoux, before he started this section, did amend line 25 on page 4 to put in the word "districts", so that it is now "annually to public elementary and secondary school districts". You're aware the word "districts" is already in the sentence?

**DELEGATE MARTIN:** I'm sorry, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Why don't you look at your book there? And either go to—can you go to page 4 a minute with me?

**DELEGATE MARTIN:** You bet.

**CHAIRMAN GRAYBILL:** Page 4, line 25. Before we started the whole Education Article, we amended by—they made some addendas to their draft here. And it says—the line should read "secondary school districts". They've got a little caret there. So that—I just want you to know that word is there.

**DELEGATE MARTIN:** I'll withdraw my amendment.

**CHAIRMAN GRAYBILL:** Now, I don't—okay?

**DELEGATE MARTIN:** I'm sorry.

**CHAIRMAN GRAYBILL:** Very well. We'll let you. All right. Mr. Martin's amendment is withdrawn. Is there other discussion of Section 5?
(No response)

**CHAIRMAN GRAYBILL:** Very well. Members of the body, you have before you for your consideration, on the recommendation of Mr. Harrington that when this committee does arise and report after having had under consideration Section 5 of the Education Article, that the same be recommended for adoption. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** Section 5 is adopted. Will the clerk read Section 6.

**CLERK HANSON:** "Section 6. Aid prohibited to sectarian schools. Neither the Legislative Assembly nor any county, city, town, or school district, or other public corporations shall ever make, directly or indirectly, any appropriation or pay from any public fund or moneys whatever or make any grant of lands or other property in aid of any church or for any sectarian purpose or to aid in the support of any school, academy, seminary, college, university, or other library, scientific institution, controlled in whole or in part by any church, sect or denomination whatever." Mr. Chairman, Section 6.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman. I move that when this committee, after its consideration of this section of the Education Article, does rise and report that it move to adopt the same.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** We have, in this article—in this section, as—a majority of the committee recommended the retention of the existing language for several reasons, and I would like, if you would be willing, to look with me at these reasons on pages 19 and 20 and 21. If you're like I am, on some of these reports, you've had excellent intentions, but you've been busy with your own committee and haven't had the time to maybe look in depth. And it could be that looking at them now would save us time as we carry on the debate which follows. I would direct your attention to the top of page 20. Page 19 simply states that we did very seriously consider the issue and here are some of the major points which came up. Number one, on line 3: "The primary and sigificant advantage secured by the present provision is the unequivocal support it provides for a strong public school system. The traditional separation between church and state, an important part of the American social framework, has also become a fundamental principle of American education. The growth of a strong, universal, and free educational system in the United States has been due in part to its exclusively public character. Under federal and state mandates to concentrate public funds in public schools, our educational system has grown strong in an atmosphere free from divisiveness and fragmentation. Any diversion of funds or effort from the public school system would tend to weaken that system in favor of schools established for private or religious purposes." The second argument has to do with the fact that it is the function of the state to provide for education. We've recognized that already in the article as we proposed it. We do have that right as a state. Moving to line 26, in the third of the major points which we, as a committee, considered—and this, I think, had perhaps as much to do with the decision we made as any of these that we have discussed—"Change in the present provision, whether substantial or merely formal, might endanger passage of the entire Constitution. The church-state issue, which is interwoven with the question of public aid to nonpublic schools, stirs deeply held emotional feelings in various sectors of the public. The emotionalism aroused over potential debates on this question might obscure other important issues in education and in the Constitution as a whole. The change in this area proposed in New York's 1967 Constitution is thought to have been a significant contributing factor to the Constitution's defeat at the polls. A large number of witnesses, representing various religious and nonreligious organizations, testified emphatically against any change in the present provision." Our fourth major point, that's listed beginning on line 10, poses the possible threat to religious groups if the state begins in some larger measure to participate in their educational process. Down on line 24 of page 21, we begin a bit of in-depth statement about the alternatives that have been proposed. "A second alternative considered by the committee was to exclude federal funds administered by the state from the applicability of the provision. A fundamental concern expressed by some witnesses before the committee was that some forms of federal aid to nonpublic schools, particularly of the type envisaged in revenue sharing programs, are or would be prohibited under the existing provision." The committee does not agree that this poses a realistic problem for, as indicated in Appendix F at the back of this report, there is a listing of the funds and the kinds of aid which have reached students in nonpublic educational institutions in the state. "It is the majority of the committee's opinion that presently operating federal aid programs in education are not being significantly affected by our constitutional provision. As to future federal programs, the committee feels that precedent shows that potential problems can be resolved without a change in the constitutional provision. No specific case was brought to the committee's attention in which federally granted funds have been denied in Montana to nonpublic schools because of the operation of the existing constitutional provision. A note from the Department of Public Instruction indicates that they have not kept any available federal funds from distribution to nonpublic schools." And I think if you look at the appendices that are in the back of our report, there's an indication of textbook loans and various federal programs which have been available and have been distributed in the amounts that are there stated. Let me say that, simply to make some kind of statement about feelings on this thing, it seems to me that I am somewhat uncomfortable in defending status quo things. I feel that life is a changing process and that we constantly have to be in a dynamic kind of dialogue with what's going on if we're going to stay in touch with what's happening in our world. Probably if we were starting from no place, the exact wording of this statement might not be as it is in our Constitution, but we did genuinely feel that this had had an effect on the New York Constitution, that it was establishing at least the principle of separation that we have observed in our government and in our schools throughout history, and that to tamper with it would be to endanger the entire document. As a way of understanding this, I thought for myself that this Constitution, in some ways, can be likened to shipbuilding in this country in the middle of the 1800's, when there was a change going on from sailboats to steam engines. And for awhile those who advocated steam and those who advocated sails were in battle as to how to build vessels that would handle ocean transport. There was a period in our history when both sails and steam were onboard the ships; they didn't trust either one completely. I think Montana is in process of transition, as is our nation, and always is in the process of transition and there must be some holding firm on certain principles as we move out in others. And I've sometimes thought we're midway between the cow pony and solid fuel rocketry here in Montana. We have both. Both have a place, and each does a job. I profoundly hope that the solid fuel rocketry that's less than a hundred miles from here and—never is used in those silos; I hope we'll see the day when that's refashioned for a granary or whatever those things. But at any rate, this is where we are. And we felt that to play fair with the document as a whole, the majority of us would advocate keeping the section as it now stands. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I'd like to move an amendment to this section. The amendment is the minority proposal on page 43. The amendment removes the word "indirectly" from the body of the majority proposal and adds, at the close, these words: "This section shall not apply to funds from federal sources provided to the state for the expressed purpose of distribution to nonpublic education."

**CHAIRMAN GRAYBILL:** Mr. Harbaugh, what's the word that you remove?

**DELEGATE HARBAUGH:** The words "or indirectly", on line—well, it's on line 8 of the minority proposal, where the correction is made. In the majority proposal, it's on line 6.

**CHAIRMAN GRAYBILL:** Line—all right, on page what?

**DELEGATE HARBAUGH:** On page 5, removing the words "or indirectly".

**CHAIRMAN GRAYBILL:** Line—I just want to be with you here. Line—page 6—

**DELEGATE HARBAUGH:** Page 5, line 6. We're deleting "or indirectly".

**CHAIRMAN GRAYBILL:** Okay. So the sense of the minority proposal is to delete the words "or indirectly", on line 6 on page 5, and to add the sentence which is placed at the end, which is line 14 to 17 on page 43. Is that correct?

**DELEGATE HARBAUGH:** That's correct.

**CHAIRMAN GRAYBILL:** All right. Now, go ahead.

**DELEGATE HARBAUGH:** Mr. Chairman. I suppose at the beginning of this I should say that—I should admit to my special interest here, that I am a member of a denomination which, along with three other denominations—two other denominations—has a financial interest in the support of Rocky Mountain College in Billings. The press had an interesting time with the fact that I was planning to debate this, and I hope that, if nothing else, this debate will prove that ministers are human and that they can disagree with one another. I'd like to give you some of the reasons why I think we need some changes in this section. First of all, I think that it's important to understand the background of the so-called Blaine Amendment, which is the section that is presently in our Constitution, which the majority is proposing that we retain. Now, this type of article is common to many states. I think there are 30-some states that have this particular type of article. It originated through a man by the name of James G. Blaine, who was an American statesman and politician back in the 19th century. In 1862, he was elected to Congress, and he introduced into the Congress the Blaine Amendment, which basically is the clause that we have in our Constitution. That amendment did not pass the federal Constitution, but it developed in an area when there was a great deal of concern across the country about foreigners and about Catholics in particular. A rather secret society grew up, the purpose of which was to be sure that no foreigners and no Catholics were elected to public offices. They called themselves the "Know-nothing Party", because whenever they were asked what party they belonged to, they would reply that—"I don't know." And so they gained the name of the Know-nothing Party. Now, even though the Blaine Amendment failed in the Congress—the amendment which espoused the purpose of the Know-nothing Party—at about this same time across the country, many states were writing their constitutions. And, consequently, as the hysteria of this movement spread across the nation, many state constitutions wrote into their document the Blaine Amendment. And so, in 1889, when Montana was developing its Constitution, along with the Dakotas, this section was included. So, here in 1972, or 80 years later, the State of Montana still retains in its constitution remnants of a long-past era of prejudice. And the inflexibility and the rigidity of this borrowed heritage is something that I do not think belongs in our Constitution. Now, having said that, I want to make the point that it is not my intention here to debate the doctrine of separation of church and state, because I think that doctrine has amply been set forth by the United States Supreme Court's interpretation of the 1st Amendment and there is absolutely nothing that we could do here as a body that could in any way alter 200 years of court interpretation and tradition. And so, the point of this amendment has to do with federal aid to nonpublic education; it does not have to do with state aid to public education. The minority is right in pointing—or the majority, rather—is right in pointing out that we are already receiving federal funds in this state and—although, because of the restrictive language of our present Constitution, sometimes we have to use some rather questionable methods in order to see that the aid gets to its destination. Just as one example, let me cite the way that we distribute textbooks in this state to the nonpublic schools. They have to go out on what is called permanent loan to the public schools, because the state cannot give textbooks to the public schools because of this particular section of our Constitution. And so, we loan them permanently. Now, you and I know that if we have a book in our library and we loan it permanently, what that means. And the purpose of removing the word "indirectly" from the majority section would simply serve to legitimatize constitutionally what we, in fact, are doing in many areas and would make it possible for the state to authorize other forms of indirect aid permissible under the 1st Amendment, which provides assistance on the child-benefit theory. So let's keep this clearly in mind. We're talking about federal aid in this amendment, not about state aid. Secondly, the primary thrust of this amendment would be to insure that any federal funds that were made available to nonpublic parochial schools in the future would not be denied. Why do we need this sort of amendment? Well, precisely because we don't know what the structure of the financing of the public school systems is going to be in the decades ahead. Let me read to you a section of a news clipping which appeared in the *Independent Record* just a few days ago: "A presidential commission urged today that the states assume the primary burden for financing public schools and said much less reliance should be placed in local property taxes for this purpose. The commission on school finance appointed by President Nixon 2 years ago also recommended the federal government distribute incentive grants that would reimburse the states for part of the cost of financing elementary and secondary education. In the appendix, the commission said it did not think it appropriate to offer recommendations affecting national tax policy, including, among other things, new revenue sources such as value added tax. The report itself did not mention such a possibility. The commission—and then it goes on to tell more about the commission. But the point is here that across the nation there are many studies going on affecting various methods of financing education. Currently there is in Congress a $24 billion package for higher education under consideration, which, if it becomes a reality, would pump large sums of federal money into the states. Now, if the federal government should, in the years to come, make block grants, provide tuition payments to students, Montana might be in a position where we could not receive such funds if its Constitution forbade the distribution of those funds through the State Department of Public Instruction. And by the addition of these few words at this time, I think we could prevent this from ever happening. Private school students need all the help that they can get in these days of inflation and rising cost. And the state should not, in my opinion, take a position which might, because of its extreme inflexibility, deny at some future date funds which might legitimately be channeled to them from federal sources. If we're serious about our concern to give all students within our state an equal educational opportunity without regard to their religious preference, here is a way in which that cause can be aided, and it can be done without any additional cost to the State of Montana. I urge the adoption of this amendment.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman. I don't really know quite how I got mixed up in this. I don't belong to any church or have any affiliation with any college, public or private, or school, public or private. I guess I got mixed up in it because I looked at the language, and to me, the language seems eminently fair. It takes away nothing from anyone. We have—it is admitted that Section 6 is an especially stringent section that perhaps is among the most stringent in the nation. It seems to me that those who resist the minority report perhaps might be accused of taking a "dog in the manger" attitude; if we can't have it, you can't have it either. What would happen to the federal funds if they came to the State of Montana and, under the Blaine Amendment, they could not be distributed to nonpublic schools? Would they lay idle in the state treasury? Would they revert to the federal government? I think, Mr. Chairman, that this Convention has given great attention to the rights of minorities, and I submit to you that in this instance, we have a minority right of great significance. We have given great attention to the matter of pluralism in our society and the necessity to maintain it. I think these few harmless words could be of significant benefit and cannot possibly harm anyone in the State of Montana. I urge the adoption of the minority report.

**CHAIRMAN GRAYBILL:** Mr. Driscoll.

**DELEGATE DRISCOLL:** Mr. Chairman. I rise in support of Mr. Harbaugh's amendment. I first must state that I do have an interest in this argument. I am a Catholic and the parent of 10 children attending both public and private schools. I've also been engaged in public education all my life. I look with a great deal of respect on Mr. Burkhardt. I have followed his thoughts during this Convention quite well. He speaks eloquently and persuasively in everything that he does. However, when he speaks of Montana in transition and yet wants to retain an archaic provision in our Constitution, I can't quite understand that. When we're going to put the welfare of 10,000 children against the defeat of this document, we must also remember that we are getting another minority group who will attempt to defeat the document. I feel that Mr. Burkhardt's provision is adequate. It doesn't provide for any religious emphasis. It does not provide for any conflict in church and state. It merely provides that we give children of another minority group as much of a benefit as we gave the Indians yesterday. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman. When I came in this morning, I was going to move to delete all of Section 6. I was requested not to, so I would like to speak on behalf of the minority. I'm a Protestant. I have five children. They all go to the public schools and to the state universities, and I have no intention of sending them to any private school at this time. The majority states that they know that parochial schools are getting funds from the federal government, and they say it's fine. If it is all right, why can't we accept this simple amendment? I cannot see their reasoning at all. I've heard the argument that if they want their own schools, then they should pay for them themselves. I agree with this doctrine, but if we want true separation of church and state, then the other churches—they don't pay property taxes; they don't pay any income taxes; when they have a donation or a bequest by reason of death, they pay no state inheritance tax, they pay no federal estate taxes. Now, if you want true separation, you should require your churches to pay these taxes, and don't ask for these benefits from the government. So I think it is really ridiculous not to accept the minority. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, members of the committee. I'm with Mr. Brown. I've lived with the Blaine Amendment and the philosophy of the Blaine Amendment all the days of my life. I can remember during the Al Smith campaign when they burned crosses on the rimrocks in Billings. I can remember being let out of school in the fourth grade to erase three "Ks" on the front doors of the Catholic church in Billings. I am a Roman Catholic. I'm not a card-carrying Roman Catholic; I'm a practicing one. I don't take up the collection or work very hard on drives, but I find something in my religion that I need, and I don't try to visit it on anyone else. To me, the Blaine Amendment is a badge of bigotry, and it should be repealed. I've been asked to back off on that and I'm going to try to be as reasonable as I can, although I feel much more emotionally about this than I do about our courts of justice which, just a week ago, I worked so hard on. My credentials on trying to get rid of badges of bigotry are good. In 1953, I personally and singlehandedly repealed the miscegenous marriage law of Montana on the very sound ground that our statute books should not be graced with such a despicable statute. I feel the same way about the Blaine Amendment. Somebody asked the other day how much purer we can get than pure, what we could do with our water to make it any cleaner than clean. I submit to you that the Legislative Article has a watered-down version of the Blaine Amendment in it. I don't know what more we could do than perhaps make it impossible for the Justices of the Supreme Court to approve any such legislation, or possibly prohibit the Governor from signing such legislation. My personal opinion is that this thing should come out of here as a badge of bigotry, but I'll be content with what—the well-reasoned statements that Mr. Harbaugh has made if that can be accomplished. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. I am not exactly sure what Mr. Schiltz meant—what all he meant to include in this bigotry idea of his. I rather think that most of us do not believe that the separation of church and state is an evidence of bigotry. I think we rather believe it to be an evidence of an evolution in history that has proved to be very wise in this country. You don't have to go back just 5, 10 years. You can go back across the history of church-state relationships, not only in this country but in other countries, and back as far as recorded history of man is concerned. And somehow, when state and a dominant church, or any church, get mixed up, it always has seemed to work to the detriment of both the church—the religious institution, finally, and to the state itself. I don't think I need to make a long speech to document that. I believe Americans—thoughtful Americans are dedicated to the idea of church and state separation. Evidently, the minority group is dedicated to that idea because they do not wish to change this section. The remarks suggest that they want to change it, but there must be some reason that they do not ask to strike it all out. They simply would like to add this one particular amendment to say that we now allow, in definite words in our Constitution, that federal aid will not be prohibited. The majority report, I notice on page 20, simply says—or rather on page 22—said that no specific case was brought to the committee's attention in which federally granted funds have been denied in Montana to nonpublic schools because of the operation of the existing constitutional provision. The arguments for putting this sentence in is that it is done anyway. I presume the majority committee's suggestion for keeping it out is equally valid, that since it has no effect and does not limit the present situation—is not limited—and federal aid is able to be channeled for these specific purposes, that there's no real reason for including it. I did not identify myself as one with particular interests in this on the basis of being a United Methodist with interests in Rocky Mountain College, because several years ago our three denominations—Presbyterian, Congregational and Methodist—gave up corporate control of Rocky Mountain College on this particular issue. The administration of the college said that they could not get federal funds because we were a church-related college and the church had corporate control. And because we did not see it several years ago, nor do we see now, any real way for a college to continue in existence in Montana without some kind of government help in terms of building and the rest of it, our three denominations voted to give up the corporate control of Rocky Mountain College. Rocky Mountain College is now a private institution. Our three denominations are still traditionally and historically and psychologically interested in Rocky Mountain College, but we do not now control it. We did it for two reasons: one, I've said that Rocky could not get federal aid for building and programs as a church institution that it needed to have and, secondly, that our denominations actually do believe in this idea of separation of church and state. And rather than receive aid for our church school, we gave up control of the school that we had built and maintained and sustained for nearly a century, through many hard times, here in Montana. I submit to you that many people of this state do feel very, very keenly on this issue. We've mentioned this on others. I would—I don't think I'm going to vote just on that; I'm going to vote on the basis of my own private belief on this. But I think it is something that we need to take into consideration. One of the proponents of this minority proposal said that many people will vote against—perhaps be against the new Constitution if we do not make the change. Well, I submit to you that they hardly are going to espouse the old Constitution where the wording is exactly the same on that account. There are many other things that could be said, and I'm sure other people will put in their particular viewpoints. I simply rise to suggest that because many people are not rising on this other side is not because we believe that church-state separation is a badge of bigotry.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman. I'd like to make a substitute motion, and perhaps the Chair would read it.

**CHAIRMAN GRAYBILL:** Will the clerk read Mr. Loendorf's substitute motion.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 6, page 5, lines 3 through 13, of the Education and Public Lands Committee Majority Proposal by deleting it in its entirety and inserting in lieu thereof the following words and punctuation: 'Section 6. Aid prohibited to sectarian schools. Neither the Legislative Assembly nor any county, city, town or school district or other public corporations shall ever make, directly or indirectly, any appropriation or pay from any public fund or moneys whatever or make any grant of land or other property in aid of any church or for any sectarian purpose or for the aid in the support of any school, academy, seminary, college, university or other—library, scientific institution, controlled in whole or in part by any church, sect, or denomination whatever. This section shall not apply to funds from federal sources provided to the state for the expressed purpose of distribution to nonpublic education.' Signed: Loendorf."

**CHAIRMAN GRAYBILL:** Very well. Mr. Loendorf has made a substitute motion the effect of which is to add to the majority report the so-called Blaine Amendment, the last sentence of the minority report about federal funds. So that we now have the majority report; we then have the minority report that has that sentence on it but also takes out the word "indirectly"; and we now have Mr. Loendorf's substitute motion which, if

I'm not mistaken, Mr. Loendorf, is the text of the majority report with the last sentence from the minority report written in. Is that correct?

**DELEGATE LOENDORF:** That's correct, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. You may have your substitute motion.

**DELEGATE LOENDORF:** Okay. Thank you, Mr. Chairman. As Mr. Burkhardt indicated initially, he thought this was perhaps an issue that was a bit emotional, and I thought we could talk on it a completely common sense and logical basis. I see I've got the Chair a little excited; he's back to calling me Loendorf again. (Laughter) [Editor's note: Delegate Loendorf pronounced his name "Lendorf".]

**CHAIRMAN GRAYBILL:** I had something else in mind and I just—excuse me, Mr. Loendorf.

**DELEGATE LOENDORF:** Right. But I do believe this body is capable of a common sense and logical approach to this question. I recognize it's emotional in certain areas, and I think the amendment I've made shouldn't cause much emotion. If you read it, it's as the Chair explained. It takes Article XI, Section 8, and keeps it as it is. It's different from the minority report in the sense it puts the words "or indirectly comma," back into it. What this section does in our present Constitution and what it means, I'm not sure. But under my provision—or my proposal, it will continue to mean and do whatever it does now. The minority report differed from the majority, then, in only one other area, and that was the last sentence, by which it excluded federal funds from application of that section. And I'd like to talk about that, I think, in an area I think that was forgotten. That is, what effect does this last sentence have on public schools? To me, whatever benefits it has for private schools, which I'm sure it was aimed at and attempted to do, it will have the same benefit for public schools. Now, the majority, if I read their comments correctly, did not reject that last sentence because they wanted to prohibit federal funds from coming into the state. Rather, they felt it was not necessary and, so far, I agree; it has not been necessary yet. But I would point out that no one has taken this matter to court yet. And in, these programs, which the majority mentions in their comment, involve some state administration, that is, aid to private schools. It may or may not be aid which our present Constitution prohibits. I don't know. But if somebody does take, say, one of these present programs to court—say the program mentioned in the appendix which concerned loans to textbooks—and were successful, the $5,000 that were—apparently went to loans to private schools would be lost to the state from the federal government. But the hundred and fifty-five thousand dollars which went to the benefit of public schools would also be lost. So what we're dealing with here is a two-edged sword. And I've observed this happen on two occasions. I'm a member of the Board of Directors for Legal Services for the state. Last summer, a gentleman from the federal government came from either Kansas City or Denver and told us we had to amend our bylaws, change our method of operation, if we wanted the federal funds. We did so and we did get the funds. One of the last special sessions of the Legislature was called for the purpose—so we could amend state law to comply with the Highway Beautification Act so we could receive federal funds there. And, of course, both these things we could do. We had flexibility there. It's easy to change a bylaw; you can change a statute. But here, we're dealing with a constitutional provision. And I think if we want to achieve the goal of the majority as stated by Mr. Champoux yesterday when he read to us initial report—or the initial statement of the majority—and that is to allow flexibility to meet changes yet unknown—then I think the last sentence proposed by the minority is something we should add. I'm not too concerned about present programs. I am very concerned about the future, what's coming under revenue sharing. We don't know what that'll be, but we do know one thing for sure: that's going to involve a lot more state participation, state involvement. If from—what I read in the papers is true, the state will probably be granted funds to selfadminister entirely. Now, if we find ourselves in a position where we can't accept those funds because of our Constitution, we're in a rather precarious position, because it will not be easy to amend and put in this sentence that we have the opportunity to do now, quickly. It'll take a period of time, perhaps a couple years. If this never occurs, then this last sentence will never have any effect. So, merely what my amendment does, doesn't change anything. It merely maintains the status quo. It's like a doorstop on the door that's open that allows federal funds to come into the state, and nothing more than that. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. Will Mr. Burkhardt yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Burkhardt, will you yield?

**DELEGATE BURKHARDT:** Yes.

**DELEGATE BLAYLOCK:** Mr. Burkhardt. On the New York Constitution which failed, as you told us about, on this issue, was that a matter, in their Constitution, where state funds would be distributed to the nonpublic schools?

**DELEGATE BURKHARDT:** I think that was the fear, Chet, that was involved. They had substituted the 1st Amendment, as I understand it, for their former, more restrictive statement. Perhaps someone else has that right at the tip of their tongue, but that's my reaction.

**DELEGATE BLAYLOCK:** Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** I am a public school teacher. I worked in public schools all my life. I am Protestant. I could not buy the 1st Amendment because of the deletion of the word "indirectly". I think that if that were out of there, that it would be fairly easy to appropriate a number of funds and then—to some other group and then say this will be done indirectly. However, I am going to support Mr. Loendorf's amendment. It is stated just as it is in the old Constitution, and I, for the life of me, can't see any harm with this where it says that this section shall not apply to funds from federal sources provided to the state for the expressed purpose of distribution to nonpublic education. And if those federal funds come in and are for those purposes, for all the children of the State of Montana, I can't see harm in that. And I shall support Mr. Loendorf's amendment.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. Rather reluctantly, I will accept the deletion of this phrase "or indirectly". I really think that there's no need to have that in our Constitution. I think we ought to realize that we have at least two other places in the proposed Constitution we've already adopted: in the Legislative Article in subsection 6 of Section 11, which Mr. Schiltz pointed out, that prohibits direct aid of any kind; and in the Bill of Rights, in Section 5, we adopted the language of the 1st Amendment. I guess if you put it in there three times, you've really got the message across. But there are a couple of other things that I think need to be said on this, particularly in regard to the New York Constitution. It's been pretty much accepted here that the New York Constitution failed because it substituted the wording of the 1st Amendment, and I would question that. There were many other reasons why the New York Constitution failed, one of which was that they spent $11 billion and—or $11 million. I think there were also some political considerations that had to do with the failure of that Constitution, too. There were many witnesses who testified before our committee on this issue. And those who favored retaining the present section very often did give evidence of being quite emotional about this thing. However, I made it a point during the testimony to question many of these people and to ask them, specifically, whether or not they objected to federal aid being received by our schools where it was allowable under the 1st Amendment. And I think that, as I recall, there was only one and possibly two exceptions of the—I suppose we had nearly 40 people who testified on this—but with the exception of one and possibly two people, none of them that I questioned on this objected to the federal aid going to the nonpublic schools. Now, Mr. Harper mentioned that his denomination gave up control of its school because of the financial squeeze; and I think that's too bad, that we have to reach a state in America where that happens. I feel that we are approaching a situation in which the pluralism of our society could be very seriously threatened if, indeed, education becomes the prerogative only of the state. And I think we ought to keep that very much in mind. I think we ought to remember that there was a time in this country when there was no such thing at all as public education; that it was the religious denominations, in fact, who brought education to America and established it; and that for a hundred years, it was the denominations of this country which fostered education in America. And now, in a time when there is intense competition, our denominational schools are being forced out of existence. It seems to me that the situation is a little like that of a man who divorces his wife after she's lost her attractiveness and appeal to him.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. Will Mr. Loendorf yield?

**CHAIRMAN GRAYBILL:** Mr. Loendorf?

**DELEGATE LOENDORF:** I yield.

**DELEGATE JAMES:** Mr. Loendorf. The next to the last line of your amendment here says "to the state". Can funds be distributed to nonpublic education without going through the state? Is that possible?

**DELEGATE LOENDORF:** Very possible. As I pointed out, Mr. James, we don't know how this will be done by the federal government. Now, I understand—although the educators, I'm sure, know this better than I—that they usually distribute them through the state.

**DELEGATE JAMES:** Mr. Loendorf, will you yield again?

**DELEGATE LOENDORF:** Yes, I yield, Mr. James.

**DELEGATE JAMES:** Do you think this would be more palatable to some who have objections if this "to the state" was deleted? Or do you suppose it would be as effective? I mean this is just one of those iffy questions.

**DELEGATE LOENDORF:** I doubt—I don't think whether those words are in or out really makes any difference in the meaning of the section. It's—there's perhaps no problem with the federal government, and there wouldn't be if they distribute them directly. So it seems to me that you would need the words "to the state" in there that—to show that you're covering cases where the funds are funneled through the state to the schools.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. Mr. Loendorf, the purpose of my comment was: I was wondering if taking out "to the state" would make it more palatable and remove some of the emotion—

**DELEGATE LOENDORF:** Well, to me—

**DELEGATE JAMES:** —without emasculating the thing.

**DELEGATE LOENDORF:** I guess I'm not a very emotional person. I don't see any emotion in "to the state".

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I rise in opposition to the Loendorf amendment, in opposition to the minority report, and in support of the majority report as written. For the record, I'll state my personal interest in this matter. I am a Mason and a product of the public school system of the State of Montana in the city of Anaconda. However, I am happily married to a charming Catholic woman, JoAnn, we've been happily married for 14 years. I'm raising my son Chuck and my daughter Jolie as Catholics; and even the Pope will admit, that's pretty open-minded for a Bagdad Shriner. (Laughter) However, I am speaking to you today not as a Mason or as a Protestant, but as one who is dedicated to preserving our public school system. And that's what this issue is all about. I don't think we ought to dilute that in any way. We ought not to open the door to anyone. We have the finest public school system, open to all, that has ever been devised by any society. I glanced at the Helena telephone directory in the yellow pages and found over 40 listings under the heading "Churches". We're not just talking about some tax money to the parochial or Catholic schools. If we open the door to any of them, they all will be equally entitled to tax money. Speaking specifically to the two amendments, to the Loendorf amendment and the minority report, it absolutely escapes me, the distinction between state and federal moneys. For Reverend Harbaugh's information, I don't know whether you think this federal money comes from the collection plate on Sunday. It comes out of my pocket as a taxpayer. It is fundamentally wrong to take any tax money, and this applies to all federal money, and apply it to any church purpose. So, I think that both of these amendments really would open the door—could open the door to a violation of our public school system. I strongly urge that we maintain the majority report as written. I would not want to see the State of Montana to constitutionally say, "We can take tax money, run it through the hallowed walls of Congress and then it's all right to give it to a church school, but we won't take it from our taxpayers and run it through this house right here and give it back to the church school." I strongly urge that we support the majority report.

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** In all our testimony, as Mr. Harbaugh told you, we had three different church denominations that spoke before us who are very, very opposed to any public money—or any federal money—to be allocated to any of their church or schools. They wanted to preserve the article the same as written. To tell you specifics on one, the Seventh Day Advent schools—he talked to us and he pointed out very strongly that if any of this money is ever distributed to any private school, then the federal government or the state will take over part of their church work. And they specifically told us they wanted no aid from no taxes or any allocation of any kind. He pointed out that—"If we cannot support our private schools, then it's our fault. We are the ones that's running it, and we don't want nobody to interfere with us. We teach our religion and we want it this way." Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. I rise in support of the majority report. I, too, am a taxpayer of the federal government and I don't want any of my tax money going into my church, and my church doesn't want it. And I think that both of these amendments start the opening of the door to the use of not only state but—federal money, but the possibility in the very near future of state money for the use of private and parochial schools.

**CHAIRMAN GRAYBILL:** Mr. Artz.

**DELEGATE ARTZ:** Mr. Chairman. I belong to Holy Family Parish in Great Falls. I am the financial adviser commissioner for the parish, so I do have a little prejudice. I don't think I'm emotional, though, because we're talking about money. Money is not a very emotional thing. (Laughter) I would like to go much farther, of course, than either of the amendments go, but I am a practical person; I realize it would be impossible. But to show you what some of the other ideas are and to give Father Gorman, my parish priest, full credit, I think I should read a little of his work into the record. Just one paragraph taken from his release of February 3, 1972, entitled *Parish Goals and Objectives in Education*—quote: "We cannot speak of the state as independent of the people who make it up, so we should not merely grant each other freedom of religion but actually facilitate the teaching of religion. At the present time in history, we can only hope that those who demand freedom for themselves will also grant it to others, for it is only those who silence their conscience who agree that justice is being served at the present time when only nonreligious schools receive taxes levied on all people for education."—end quote. You all got this booklet the other day put out by the Task Force on Economic Growth and Opportunity. The task force was made up of 100 corporation presidents, and, briefly, they bring up one other point—and I quote: "In brief, we recommend that the government consider continuing to finance education for all children but that it offer them, as an alternative to public education, financial support for private education up to the amount of the average expenditure per pupil in local public schools." Now, they're basically concerned with just one educational setup; there is nothing to compare it with. Quoting—"Where market discipline, the knowledge that if the job is not done as well as it can be, someone else who can do it better will get to do it, is absent, both complacently and timidity develops." And finally, on one other little issue, I have a letter here signed by Reverend Charles Gorman; Sister Mary Kevin, who is the Principal of Holy Family School. "To whom it may concern: As of now, Holy Family School has 18 students in attendance from Malmstrom Air Force Base in Great Falls. To date, the school has not received federal funding of any kind for these students."—end quote. We do receive, in the city of Great Falls, federal impact funds to take care of the cost of educating those children who come into Malmstrom and other federal projects. According to the report in the back of the article we're working on, there are 2,057 private school children in Great Falls. We are saving the taxpayers of Cascade County $1,364,081. That averages out—I didn't have my calculator, but reasonably close to $658.76. Multiplying that by the 18 students, Holy Family is saving Cascade County approximately $12,000 on those 18 students. Therefore, I think in fair to—fairness, we should be at least entitled to a few federal funds if we can get them. Thank you very much.

**CHAIRMAN GRAYBILL:** Mr. Lorello.

**DELEGATE LORELLO:** Mr. Chairman. I'm a Catholic and a taxpayer, and if I were to try to convince everybody in this hall that I knew everything about this Education Article, I think I'd be less than truthful. I've asked some educators who can't even explain the foundation program to me, and I really don't understand it myself; but I have a little problem in that I have two children going to school several blocks away from one another, and when they go to get on the school bus in the morning, the one that goes to the private school can't get on the bus and the other one can. Now, really, our problem in Anaconda isn't that great, because we have a very nice individual, Mr. Sonny Gore, who owns the buses, and he insists that they all can ride as long as he owns them. Now, I can't understand why my—both the children can't ride the buses, and my children can't either. I hope you'll support Mr. Loendorf.

**CHAIRMAN GRAYBILL:** Mr. Woodmansey.

**DELEGATE WOODMANSEY:** I would rise to resist the Loendorf amendment and also the minority report. I think probably the best example that we've seen here of the double standard I think that we have here is that in our present Constitution, we do not allow any state funds to go to the private sector. And if our money goes to Washington and comes back, that's okay. And I believe that it was the intention of those who first set up this Constitution that there should be separation of church and state. Our public schools are free to anyone who wishes to go. In many cases, taking over those students from the private school will not increase the cost to the taxpayer that much. As we see at the present time, especially in the lower grades, the enrollments are going down. This does not necessarily mean a new building or necessarily a fantastic amount of new teachers. It may, in some way. I'll be glad to pay it. I want this separation of church and state, and I shall fight for it through our Constitution. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman. I rise first to request that my presence be noted so that I can vote, because I do want to support the Loendorf amendment. We live about a half a block away from a good public school in Miles City.

**CHAIRMAN GRAYBILL:** The journal may so show, Mr. Choate.

**DELEGATE CHOATE:** Thank you. We live about a half a block from a good public school in Miles City. I am a Protestant. We have two children in school. The Catholic school, the Sacred Heart School, is clear across town. They don't have any bus service going there so we, necessarily, have to get them there ourselves. And I drive them, or one of us does. We have both children in the Sacred Heart School. Now, either we're kind of stupid or else it's because it's a pretty good-quality school. I feel there is a good deal of merit to it, and I think they are entitled to some assistance federally. And I support Jerry's amendment. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. Will Mr. McNeil yield to a question?

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE McNEIL:** I yield.

**DELEGATE BLAYLOCK:** Mr. McNeil. There can be no quarrel that tax money is tax money, whether it's state or federal. You're right. On the other hand, is it your position that if the federal government were to give public—or funds as this last sentence says, "provided to the state for the expressed purpose of distribution to non-public education," that you would want the State of Montana bound so it could not accept those funds, even though, say, Wyoming and Idaho and Minnesota could?

**DELEGATE McNEIL:** Mr. Blaylock. If the federal government makes our tax money available for education, I want it to go to our public school system and not be divided among 40 different school systems.

**CHAIRMAN GRAYBILL:** Is there any further debate?

Mr. Noble.

**DELEGATE NOBLE:** Mr. Chairman. I rise in support of the majority report.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Mr. President, fellow delegates. I think this discussion here today reminds me of the poem I'm sure that—

**CHAIRMAN GRAYBILL:** Hold your mike a little closer.

**DELEGATE SKARI:** —most of you are familiar with. It's the "Mending Wall" by Robert Frost, wherein he describes the repairing of a fence on a farm in New England in the fall, I take it—or in the spring. I guess it's an annual chore there to repair these rock fences that they have between the farms. And Frost and his neighbor go out to share the job of putting up the stones from each side of the wall and replacing them. And Frost has mentioned several times that he writes his poems about New England, but not necessarily just for New England. When he's talking about—he talks about the fences that society builds. And he also asks the question, when we build a wall we have to take into account what we're walling in and what we're walling out. I think here we have to consider this, too. I think we have built a substantial, solid wall in our old Constitution. I think that this wall is good and proper. I don't think we could remove it if we wanted to. For this reason, I favor the—I support the Loendorf amendment. I don't think we should, intentionally, build the same wall, however, in regard to the federal moneys. I think the states have rights here. I think they can be more stringent, but I think perhaps we would be a little unfair by building the same wall. I don't think this will undermine our public school system; I think it may even strengthen it. It will—financially, the private schools take some strain off our state system. Many other states will provide no obstacles to these federal funds, and I fail to see that we should either. Frost's farmer friend also mentioned that good friends—good fences make good neighbors. I think we—he was partly right here. It's a very earthy point. I think maybe he was partially right, but I think we have to take into account what we're walling in and what we're walling out. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. President. Would Mr. McNeil yield to a question?

**DELEGATE McNEIL:** I yield.

**DELEGATE STUDER:** What I wanted to find out, McNeil, is whether or not loans which are granted would be forbidden under your thinking? I mean, would you be against granting loans to students for education in which some [of] them are used in secular schools?

**DELEGATE McNEIL:** Of course not, and our present constitutional provision, which is the majority report, does not foreclose that either.

**DELEGATE STUDER:** Well, I was wondering if it did. That's my question.

**DELEGATE McNEIL:** No, it does not.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman, fellow delegates. When we first came here in January, I introduced a delegate proposal which stated that the State of Montana should use the 1st Amendment as the basis for this—to replace this article—section, rather. Now I find that even with myself, this 1st Amendment would not be strong enough, and I do support Mr. Loendorf's amendment, as I was part of the minority with Mr. Harbaugh. And I feel, possibly, as we look at this, we've—many times we've gone—it's come up on this floor—is the number of times signatures have come up on petitions stating whether they would or would not support a certain item. Now, as part of this, I think that, actually, we—all you're doing here is possibly guaranteeing, in a way, something that possibly we would not have—that—these parochial schools receive right now, in a way. Should we go to this revenue sharing? Should—we are not keeping this away—we are not keeping this money away from the state. But I do say that to go along with this minority proposal and with Mr. Loendorf's amendment, that we will make many friends of the Constitution, and I hope that we do. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berthelson.

**DELEGATE BERTHELSON:** Mr. Chairman, thank you. Fellow delegates, I rise to resist both of these amendments and to ask this body to support the majority proposal. I don't need to tell anyone in this group of 100 people to what denomination I belong, nor to how the denomination I belong to feels about the matter of education. I urge each of you delegates to think what has gone on here this morning. Think about it. Consider it, and let's vote for the majority proposal. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** In answer to Mr. Studer's question on loans to students. I went to the bank in the city of Billings when I was down there to investigate this very question, because I figured it would come up. The banks today will loan any student to go to any school, private or nonprivate, in the State of Montana. All the application they need is from the school which they're going to attend. If they are—have the requirements, the bank asks no questions and gives them the loan. They pay every quarter for their tuition, their books, and their room and board. If the student's parents make under $15,000 a year, the government will absorb half of the interest. If their income is over $15,000, the student absorbs all of the interest. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Would Mr. Conover yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Conover?

**DELEGATE CONOVER:** Yes, I will.

**DELEGATE STUDER:** Mr. Conover. You were getting just about to what I wanted. I thought that—you gave me an answer that—I was talking about public funds. The government has granted funds to be loaned to students. They're being loaned in places like Texas, where their Constitution does not forbid their use, like, to Southern Methodist, or students going to Baylor, or schools like that—parochial schools, you might say. So what I really wanted to know—is direct grants from the federal government to be put out as loans to students going to—be a loan to students at the College of Great Falls or Rocky Mountain?

**DELEGATE CONOVER:** That's right, Ralph.

**DELEGATE STUDER:** Okay, that's what I wanted to know.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. May I ask Mr. Loendorf a question?

**CHAIRMAN GRAYBILL:** Mr. Loendorf?

**DELEGATE LOENDORF:** I yield.

**DELEGATE ROMNEY:** Mr. Loendorf. In the last sentence of your amendment, it says "from federal sources provided to the state". Now, if the state distributes federal funds directly to nonpublic schools, there's no need for this amendment, is there?

**DELEGATE LOENDORF:** Neither the state nor the federal government now can distribute funds directly to nonpublic schools.

**DELEGATE ROMNEY:** Mr. Chairman. May I ask a second question?

**CHAIRMAN GRAYBILL:** Yes, Mr. Romney.

**DELEGATE ROMNEY:** That being the case, you a little while ago, eluded to the fact that the situation now is all right, but we don't—can't look into the future to see what's going to transpire then, about the matters you were discussing. We can't look into the future to see why not—the federal government might not deal directly in the future either, right?

**DELEGATE LOENDORF:** I can't hear him, Mr. Chairman.

**DELEGATE ROMNEY:** A little while ago, you spoke about not being able to look into the future to see what might transpire then.

**DELEGATE LOENDORF:** That's right.

**DELEGATE ROMNEY:** Neither can you look into the future now and know for certain that the federal government will not deal directly in the future.

**DELEGATE LOENDORF:** No, that's the whole point. We don't know what's going to happen in the future.

**DELEGATE ROMNEY:** So if the federal government should deal directly in the future, your amendment would be unnecessary.

**DELEGATE LOENDORF:** That's right. It would be meaningless, harmless, of no purpose, and of no effect even. It's just there to provide for cases in case the federal government chooses to deal through the state as it has in the past. And no funds, no matter how—where they come from, either the state or the federal government, under either constitutional provisions—the present state provision or the federal provision—could be given by the federal government or by the state to private schools, as I interpret it.

(Committee of the Whole chairmanship assumed by Mr. Etchart)

**CHAIRMAN ETCHART:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. It seems to me, in listening to this debate, we're confusing two issues: the elementary-secondary and higher education. There is no way that we here today can blanket both issues. And I think the chances are best for the future to stay with the majority report. And consequently, I would reject any amendments. Thank you, Mr. Chairman.

**CHAIRMAN ETCHART:** Now, Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I'd like to call Mr. Romney's attention to the paragraph on page 47 of the Education Article. You'll find in the indentation there a quotation from a recent study by the National Education and Finance Project. And this is a part of the recent national study that's just been made, and this is in regard to whether or not federal funds would go to the state, or how they would be applied. It says, "Whatever federal grants are made in the days ahead, they should not bypass state government. Instead, federal grants for public schools should be made to a state educational agency for allocation to local schools in accordance with state plans." And I heartily agree with that. I don't think we want to get into a situation where we bypass the state. And this is part of the concern to—of our amendment.

**DELEGATE ROMNEY:** (Inaudible)

**DELEGATE HARBAUGH:** No, that's just in response to the question you asked.

**DELEGATE ROMNEY:** Mr. Chairman.

**CHAIRMAN ETCHART:** Mr. Romney.

**DELEGATE ROMNEY:** That's a matter of opinion.

**CHAIRMAN ETCHART:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman. I'd like to ask a question about WICHE funds, and I don't know—I thought maybe Mr. Champoux could answer it. Maybe someone else can answer it. The way our Constitution is worded now, could WICHE funds ever be given to students going, say to Rocky Mountain College or Carroll College here in this state?

**CHAIRMAN ETCHART:** Mr. Champoux, do you yield?

**DELEGATE CHAMPOUX:** No.

**CHAIRMAN ETCHART:** Would anyone care to answer that?
Mr. Conover.

**DELEGATE CONOVER:** Yes, Jean, it can and it is being done now with the banks in Billings. This money comes from the federal government; and Rocky Mountain College—all they have to do is send a requisition or fill out a form to any of the banks and any one of these students to any private school can get four years of college education.

**CHAIRMAN ETCHART:** Mrs. Bowman.

**DELEGATE BOWMAN:** Well, Mr. Chairman, my understanding of WICHE money is that it's only state money appropriated by our State Legislature, matched by the college. We don't get federal money—

**DELEGATE CONOVER:** I couldn't answer you about state money.

**DELEGATE BOWMAN:** Well, that's what I wanted to know. Mr. Burkhardt, do you know?

**CHAIRMAN ETCHART:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** I'm sorry, Mrs. Bowman. I'm not able to discuss that. I'm thinking—I'm aware of individual cases where people who are going to a medical school or a veterinarian school, with no regard to what institution they are now in, applied for these things. But, I don't have the facts in front of me.

**DELEGATE BOWMAN:** Thank you.

**CHAIRMAN ETCHART:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. I think that what Jean is talking about is the Western Interstate Commission on Higher Education. And the money that the state appropriates goes into a fund and can only be used to designated schools. I think in Montana, as I recall, forestry and some other schools can come, but I think that at present, no, Rocky Mountain or Carroll or the College of Great Falls would be eligible, or students would be eligible for those funds.

**CHAIRMAN ETCHART:** Mr. Romney.

**DELEGATE ROMNEY:** WICHE is an organization of several states which provide and is funded by the Legislatures of the various states. It provides for education for students in Montana, for example, for students who can go to institutions of higher education where we have in our state no educational colleges for that purpose, such as medicine, veterinary, and several others. And the states—I think it's Montana, Idaho—there's six or seven of them—and they are funded and Montana appropriates a proportionate share.

**CHAIRMAN ETCHART:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I'm sorry, I was out of the room. I was getting a copy of a document. Essentially, Mr. Romney is correct. If the funds go to the school—it can go directly to the school—and there are many instances of this in the State of Montana, for instance. But if it goes through the state, it cannot go to the schools. Thank you.

**CHAIRMAN ETCHART:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. I want to stir a little bit deeper here. Before I do, let me make this observation just for the record. As a churchman, there is a real principle we're talking about here. As of right now, at this moment, at this time in our history, it's not very large, it doesn't loom large here. The basic principle I'd like to iterate is this: that it's very difficult for a church supported by a state to be critical of the state, as I think a church should. We see evidence of this in Italy; we saw evidence of this in Germany; all across history. That's why I say this is no little thing, this matter of keeping separation of church and state. Now, I don't mean to take that blanket principle and apply it specific to every little detail that has been mentioned here. I'd like to—when I said I want to stir a little bit deeper, I would like to ask the Education Committee, and then those on the minority, and then Mr. Loendorf, what I think is a basic question. Why, in none of these reports, is any mention of private schools made? Now, I have sat here and I've looked through the entire Education report. In the very first instance, in Section 1, subsection 2, we passed this: "The Legislature shall provide for a system of quality, free public elementary and secondary schools." Now, listen to this. "The Legislature also may provide for other educational institutions, public libraries and educational programs as are deemed desirable." Now that covers a lot of territory. When we get to Section 6, we restrict this. We say they may do this. They may get up other educational programs. They may support other educational institutions. But they cannot directly or indirectly support any church or sect in any kind of educational enterprise. Now, this is my question for information. Where, in this entire document, is there a prohibition of the state's sponsoring or giving money to aid private education? Now, I also—I spoke a moment ago from the viewpoint of a churchman. Let me speak now as a viewpoint of a man who comes from Alabama originally, where the big subversion of public school moneys was not to church, but to so-called private institutions, in order to get around the issue—to beat the issue of segregation and nondiscrimination. Do we have any kind of protection, or do you think any kind of protection of that sort is needed in our present—in our new Constitution? Mr. Champoux, would you like to start on that?

**CHAIRMAN ETCHART:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I believe, if you remember, back in the Legislative Article, there was a—I can't remember exactly the specific—in Section 6, if you read that, it specifically says that there will be no moneys given to private corporations and so forth. It's in there.

**CHAIRMAN ETCHART:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman. I had hoped that this issue might not be a very emotional one up here, and I don't think it needs to be. I certainly agree with McNeil back here, with his thinking. I, too, pay federal taxes, but we do have to be practical. Life is a system of compromises. And the federal aid is coming in now, and it just seems to me that the way to get off center here, move this Convention on, perhaps not stand here and argue about it all day long and raise a lot of tempers, would be to accept Delegate Loendorf's amendment. I would support that and get on with the Convention. Thank you, Mr. Chairman.

**CHAIRMAN ETCHART:** Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman. When this committee gets ready to vote, I ask for a roll call.

**CHAIRMAN ETCHART:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman. Would Mr. Harbaugh yield to a question?

**CHAIRMAN ETCHART:** Will you yield?

**DELEGATE HARBAUGH:** Yes.

**DELEGATE KELLEHER:** Gene, this is a legal question, but maybe you've looked into it. If the—Carroll College or the College of Great Falls were ruled by a lay board of trustees, as many institutions throughout the United States are now, and if legal and equitable title to the property were transferred from the Bishop, who normally owns property like that as a corporation sole, to a private corporation, could then the Legislature grant state aid to Carroll College? Now, I'm not talking about federal funds; I'm talking about state taxes. And do you want to—Jerry would you—

**DELEGATE HARBAUGH:** I'd have to defer to Mr. Loendorf. We're on his amendment here.

**CHAIRMAN ETCHART:** Mr. Loendorf.

**DELEGATE LOENDORF:** First of all, Bob, I think those schools probably are operated that way. I don't know; I'm not that familiar with them. Secondly, the ownership of the property would have nothing to do with it. A public school can lease its institutions from a religion and operate them if they want to. And I don't think that has anything to do with what we're discussing, does it? I don't see your point. I don't think the Legislature—whatever it can do as far as state funds are concerned, we're not changing by this amendment. If it can do it now, it can do it; if it can't do it now, which I assume it cannot, then it cannot.

**DELEGATE KELLEHER:** So your amendment is limited, then, strictly to federal tax money—would allow the expense—use of federal tax money?

**DELEGATE LOENDORF:** It's completely and solely limited to that.

**DELEGATE KELLEHER:** And that's your intention?

**DELEGATE LOENDORF:** Right.

**DELEGATE KELLEHER:** Yes, all right, fine; you've answered two questions. Now, while you're still up—Mr. Chairman, may I ask Mr. Loendorf another question?

**CHAIRMAN ETCHART:** Mr. Loendorf, do you yield?

**DELEGATE LOENDORF:** I yield.

**DELEGATE KELLEHER:** Now, is federal aid ever contingent—federal educational aid ever contingent, like OEO, legal funds, the highway funds and other moneys, upon a small percentage of state participation? And if educational aid from the federal government were contingent even upon a 1-percent state participation, would your amendment authorize that?

**DELEGATE LOENDORF:** My amendment wouldn't authorize the state to participate with any funds. If the federal government chooses to endorse—or enact a program under the present provision or under the amendment I've attached, the result will be the same. I don't know what it'll be.

**DELEGATE KELLEHER:** Thank you. Mr. Chairman.

**CHAIRMAN ETCHART:** Mr. Kelleher.

**DELEGATE KELLEHER:** As I understand the most recent decisions of the Supreme Court—in fact, just this past summer—a State Legislature may appropriate aid to a institution of higher learning above the secondary level. So that really is a moot point for grade schools and high schools. Now, the comment was made that the New York Constitution was killed because of this—because it did not contain such a provision as the so-called Blaine Amendment. I submit that the New York Constitution actually contained a directive to the Legislature. If the New York Constitution had merely contained the 1st Amendment, that would have been one thing, but it actually contained the following directive—and I'm reading from page 30, Article IX of their Education Article: "Section 1-B, sub. 1: The Legislature shall establish and define a system of higher education for all the people of the state encompassing both public and nonpublic institutions by programs which may include free tuition grants, fellowships, and scholarships." As I understand it—and it's only hearsay—the Catholic hierarchy in the State of New York was responsible for urging this through and obtaining its passage at the New York Constitutional Convention. Now, I'm a "diaper Catholic" with six children. None of my children go to a parochial school. And I am almost a half century old, and in that time I think I've heard every argument, either sensible or nonsensible, on this subject. I'm a strong believer in the 1st Amendment to the federal Constitution. And regardless of what we do, we always have the protections of the 1st Amendment of the federal Constitution. And I think, in 1972, that it is time to bury some of our old prejudices and our fears, particularly our fears. I dislike the word "bigotry", because what is bigotry for me may be a very logical reason to another man. I went to parochial schools when I was a young boy. In fact, I spent 9 years in a Carmelite Monastery. I've been in state institutions, and I do not like to see the private school, whether it's sectarian or nonsectarian, disappear, because I think it is a valuable norm or canon against which state-owned institutions can guide themselves and determine whether they are keeping up with the times in the best possible methods of educational science. Therefore, Mr. Chairman, I'm going to move as—if it's in order. I believe there are two amendments up there.

**CHAIRMAN ETCHART:** Right.

**DELEGATE KELLEHER:** Perhaps I'd better ask the Chair first whether a substitute amendment is in order at this time. I believe you have two amendments now.

**CHAIRMAN ETCHART:** Well, we're on a substitute amendment by Mr. Loendorf.

**DELEGATE KELLEHER:** Now, is a substitute to Mr. Loendorf's amendment in order? That's my question.

**CHAIRMAN ETCHART:** I—No, sir. An amendment to his substitute amendment would be in order.

**DELEGATE KELLEHER:** Just—could I have just a moment to inquire of counsel? (Laughter) I'm not in order to make the motion—the specific motion that I want to make at this time. Thank you, Mr. Chairman.

**CHAIRMAN ETCHART:** Mr. Arness.

**DELEGATE ARNESS:** Will Mr. Harbaugh yield?

**CHAIRMAN ETCHART:** Do you yield, Mr. Harbaugh?

**DELEGATE HARBAUGH:** Yes.

**DELEGATE ARNESS:** Is it my understanding now that the minority of the committee has acceded to the substitute motion which has—proposed by Loendorf, and that you're supporting that?

**DELEGATE HARBAUGH:** Yes, I'll support the amendment. I think that basically it doesn't change the intent of what we're trying to accomplish.

**DELEGATE ARNESS:** Thank you, Mr. Chairman.

**CHAIRMAN ETCHART:** Mr. Aronow.

**DELEGATE ARONOW:** Will Mr. Loendorf yield to a question?

**CHAIRMAN ETCHART:** Mr. Loendorf yield?

**DELEGATE LOENDORF:** I yield.

**DELEGATE ARONOW:** In looking at your amendment, Jerry, I—you say it will not—shall not apply to funds from federal sources provided to the state for the express purpose of distribution to nonpublic education. Do you mean by that that the funds have to be earmarked by Congress before the state can act as a conduit to transmit those funds from the state to nonpublic schools? In other words, the Congress has to specifically earmark those funds and say X-number of dollars to Rocky Mountain College or X-number of dollars to the College of Great Falls? In the absence of that kind of earmarking, the state cannot act as a conduit?

**DELEGATE LOENDORF:** Right, that's exactly what we mean, I think. That—in other words: a grant comes from the federal government; unless they expressly say in it that it's to be used for these purposes, then the section above applies. And they might not earmark particular funds. I don't think they will earmark funds for at least elementary and secondary schools. I don't think they can. But what they might do, and I think they do something similar to this now, is say, "Okay, purchase a certain amount of textbooks—or these funds are for the purpose of textbooks to be distributed to the pupils attending state-approved schools of the state, whether they be public or private."

**DELEGATE ARONOW:** Would you yield to another question?

**DELEGATE LOENDORF:** Surely.

**CHAIRMAN ETCHART:** Mr. Aronow.

**DELEGATE ARONOW:** If moneys come to the State of Montana under an assumed revenue sharing type of deal that may be evolved in the future and those funds are not earmarked but they're X-number of dollars to be used for education in Montana, is it your opinion, under this amendment of yours, that the state could then say that X-number of dollars might go to nonpublic schools?

**DELEGATE LOENDORF:** No, I do not believe the state could, unless they can get around the first sentence of Section 6, which is Article XI, Section 8.

**DELEGATE ARONOW:** Thank you, Mr. Loendorf.

**CHAIRMAN ETCHART:** Mr. Mahoney.

**DELEGATE MAHONEY:** Would Mr. Loendorf or Mr. Harbaugh—Mr. Loendorf would be fine.

**CHAIRMAN ETCHART:** Mr. Loendorf, will you yield?

**DELEGATE LOENDORF:** I yield.

**DELEGATE MAHONEY:** Could this in any way dilute funds going to the public schools? I'm thinking of trade schools and things like this that we may develop in the future.

**DELEGATE LOENDORF:** I doubt it. When the federal government enacts legislation creating a program for schools, they do it. The fact that we would not accept the funds unless they, say, limit them to only public schools, I don't think would make them change their minds. My experience in the other areas—for example, the legal service example I gave you—legal services had a different type of operational setup than prescribed by the federal government. As I say, when the gentleman came from—and I don't remember, it was Kansas City or Denver—he just told us we had to operate the way they said or no money. And that was it.

**DELEGATE MAHONEY:** Well, Mr. Chairman. All I'm worried about on this deal is this—that I can see a proliferation of private schools developing United States-wide. And this might be that we've only got so much money coming in here after we get into block grants. And I think this is coming. I think this is no question about it. I think we're going to have the value added tax, and this is where—going back and send money back to the states under block grants. Now, I'm perturbed if these come, and I think they will. I see chances of—we've noticed it here, as Delegate Harper said, in the South. And we could get to the point we're going to have some private schools, and especially in vo-technical education and some of these. And if they have to divide it up on a student basis, we might could ruin our public vo-tech education. This, I think is coming, and this is what is bothering me about the whole situation on this—is not the question of parochial schools but the new—I think parochial schools are going out. I think we're going to find these people come in, and we're seeing the start of a school out here. We're getting block grants. They're going to say, "This is so much going to the state. You've got 694,000 population, and you get so many dollars." Then, if we have to hand it out over these—and this is why I have to have a lot of clearance on that particular point.

**CHAIRMAN ETCHART:** Mr. Loendorf, do you wish to close?

**DELEGATE LOENDORF:** I'll close if no one else wishes to speak. I perhaps misled you, Charley. Whatever we put in our state Constitution will not have any effect on that. If the federal government wants to provide for block grants to private vo-technical schools, they can do it, irregardless of what's in our Constitution. I perhaps misled Mr. Lorello also. At least, I've had a lot of questions raised here that I think my amendment has no effect on. It will not allow Peter's kids to ride the bus, and I hope I don't lose his support because of that. All this amendment does is maintain the status quo. It simply will allow federal tax dollars, which the federal government is going to take irregardless of what's in our Constitution, to come back as they are now. And it will insure that they come back in the future, whatever type of program the federal government develops in the future. Thank you, Mr. Chairman.

**CHAIRMAN ETCHART:** Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman. I tried to rise before Mr. Loendorf started to close on the thing. I would like to ask Mr. Loendorf a couple of questions, if he would yield.

**CHAIRMAN ETCHART:** Mr. Campbell, Mr. Loendorf has closed. A roll call vote has been called for. Members of the committee, the question now arises on the motion by Mr. Loendorf to delete Section 6 and substitute the wording as we have—as you have on your desks. As many as are in favor will vote Aye; as many as are opposed will vote No. Does any member wish to change his vote?

(No response)

**CHAIRMAN ETCHART:** If not, the clerk will record the vote.

**DELEGATE FELT:** I vote No.

**CHAIRMAN ETCHART:** Felt votes No.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Aye |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |

| | |
|---|---|
| Felt | Nay |
| Foster | Absent |
| Furlong | Absent |
| Garlington | Aye |
| Graybill | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 53 have voted Aye; 40 have voted No.

**CHAIRMAN ETCHART:** 53 having voted Aye, 40 having voted No, the motion is carried.

Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman. I would like to say why I voted against the amendment was I was hoping that Mr. Campbell's amendment to the article, which I felt was—which I liked better, would be part of the article. I did not rise to my feet earlier because I was hoping he would submit his amendment, and I wanted to explain my vote. Also, I noticed in the back of the article where they listed the number of students, they missed the largest school in Gallatin Valley, which has 370 students at this time and is a private school. These people—I'm very pleased this amendment was passed, because I feel that these people are being loaded down with taxes for our public schools. I do support public schools; my children went to public schools. But I do feel that when they have an opportunity to receive some nonstate funds, they should. And I want the record to show that I do favor that. Thank you.

**CHAIRMAN ETCHART:** Let the record so show. Are there any other amendments to Section 6?

Mr. Campbell.

**DELEGATE CAMPBELL:** Would Delegate Loendorf yield to a series of questions, please?

**CHAIRMAN ETCHART:** Delegate Loendorf?

**DELEGATE LOENDORF:** I yield.

**DELEGATE CAMPBELL:** Delegate Loendorf, in comparing the last sentence which you have in your amendment which was adopted, to the proposed amendment I would make, did you consider whether or not there may be any nonfederal sources, such as foundations or things like this, that might go through the state?

**DELEGATE LOENDORF:** That is possible, Bob, and my amendment doesn't cover those.

**DELEGATE CAMPBELL:** And what if the Congress in its wisdom provided for a hot lunch program for the school children of Montana and gave it to the children of Montana for distribution through the state? Would the state, under your provision, be prevented from allowing nonpublic school children from receiving this hot lunch program?

**DELEGATE LOENDORF:** I believe the federal government has done that now for all school children.

**DELEGATE CAMPBELL:** Well, in that type of a thing where some other thing that's similar to a lunch program, that a grant is made to the state but doesn't specifically say it's intended for nonpublic education, wouldn't your amendment still prevent that?

**DELEGATE LOENDORF:** If the grant coming to the state doesn't specifically say it's for nonpublic education, then my amendment would not allow nonpublic education to participate.

**DELEGATE CAMPBELL:** Mr. Chairman.

**CHAIRMAN ETCHART:** Mr. Campbell.

**DELEGATE CAMPBELL:** I feel that this would restrict the state, and I would like to move that my amendment be read and considered at this time.

**CHAIRMAN ETCHART:** Will the clerk read Mr. Campbell's amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 6, page 5, line 13, of the Education and Public Lands Majority Proposal by adding the following: 'Nothing herein shall prevent nonstate money from being distributed for the benefit of all students within the State of Montana.' Signed: Campbell."

**CHAIRMAN ETCHART:** Mr. Campbell.

**DELEGATE CAMPBELL:** This would be an amendment to the section that we just passed that Mr. Loendorf had approved. If I may speak just a few minutes on this, I feel that we are still not really achieving our goal. I'd like to go into a little background. I was raised in a small eastern Montana town. It's a town that is isolated geographically, and sometimes from ideas also. The town is very secure in that individuals are very secure in their absolute beliefs in their own faith. And they have, over the past, had a deep mistrust of others who didn't believe the way they did. In the past, this distrust has lessened with more enlightenment, and we do have, today, social events between groups that were in the past deeply suspicious of each other in their motives. I was very disturbed over the reaction in this town when this question of support for nonpublic education arose, because I felt that this was again bringing up the religious intolerances that I thought were slowly diminishing in that area. I firmly believe, as does Delegate Kamhoot, that life is a series of compromises. And I am deeply touched, in the Bill of Rights Committee, from the number of responses I have received from schoolchildren throughout the state. Many of them said, "Remove the Blaine Amendment and please help me in my education and save my school." I was very touched by their handwriting. And many times, of course—once in awhile, they would say, "Dear Mr. Blaine, please do something about the Blaine Amendment." But I feel that they do have a legitimate concern. In the Bill of Rights Committee, we did have the Montana Catholic Conference appear. And our questioning of that conference went to what reason they had for asking that this section be amended. They assured us that they did not intend to have the State of Montana funds diverted to nonpublic schools, to their schools. Their concern was, in the future, there may be a grant to the state which doesn't say parochial or nonparochial schools, and that this might prevent some type of program from uniformly being distributed within the state. I'm willing to take them at their word. I feel that by adding this amendment, we would take in the question of [if] there's any other nonfederal sources involved and also take care of the question of whether or not there's a specific direction from Congress. I'm worried about this, because a few states have this rigid requirement that we have against any nonpublic school or academy, directly or nondirectly. I think this would still give us the protection we want. It would allow these funds to be distributed, such as a lunch program, and I feel that it would be an addition which would give more flexibility than the present one that we passed. Thank you Mr. Chairman.

**CHAIRMAN ETCHART:** Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman. Bob is concerned about the free lunch program.

Every private school in the state can have private—school lunch program. I received this on school lunch programs, and this is for private and public schools. The commodities—flour, turkey, butter, and so forth—whatever—are commodities from the U.S. Department of Agriculture, are distributed free to both public and private schools. The Montana Legislature—in 1947, the Montana Legislature authorized a revolving fund of $25,000 to have commodities freighted into the state. They are shipped to Helena from the nearest federal terminal. This fund is not tax supported, except for the original year. Funds to keep the repayment to the fund by both public and private schools—the shipping charges fluctuate but average a dollar and a half per shipping unit of food donated. Charges are prorated by the amount purchased. The general cash is available equally to both public and private schools, and after they are set up, you can charge for lunches. This is what supports your school lunch program, regardless whether it's private or public. This is what maintains it. From the government on, children who cannot afford to buy lunch tickets are reimbursed to whichever school it involves. They will pay the total price of that lunch for this child by making application for it, and it's set up by the federal government and the state. It also says here that the public schools and private schools may participate throughout the State of Montana.

(Committee of the Whole chairmanship assumed by Mr. Graybill)

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman. May I ask Mr. Campbell a question?

**CHAIRMAN GRAYBILL:** Mr. Campbell.

**DELEGATE CAMPBELL:** Yes.

**DELEGATE BUGBEE:** Mr. Campbell, I'm confused. Do you intend to add your amendment to Mr. Loendorf's amendment or substitute it for his amendment? Just—

**DELEGATE CAMPBELL:** Okay, I intend to substitute it for the last sentence of his amendment which we have just passed. I would replace: "This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to nonpublic education." Mine would replace that, saying: "Nothing herein shall prevent nonstate money from being distributed for the benefit of all students within the State of Montana."

**CHAIRMAN GRAYBILL:** I think, Mrs. Bugbee, the Chair understands, then, that the effect would be if you pass the Campbell amendment, you'd have the original with—except the words "or indirectly" are out. Mr. Loendorf's was a substitute motion, so it took out the words "or indirectly" on line 6 of Section 7. Right? Pardon?

Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman. My amendment put the words "or indirectly" back in.

**CHAIRMAN GRAYBILL:** Oh, I guess you're right. Okay, you put "or indirectly" back in. That's right. So it's just the same way as it was, with the extra sentence, and now this is to replace that extra sentence. All right, excuse me; now I'm straight.

Mr. Burkhardt.

**DELEGATE BURKHARDT:** I'm not sure the Chair has it straight yet, but you do have his amendment in front of you, do you?

**CHAIRMAN GRAYBILL:** Yes, I do.

**DELEGATE BURKHARDT:** Fine. Well, then, it's there. It was enacted as he presented it. I have a question for the body and for Mr. Campbell. I'm wondering if the language of your substitute for Mr. Loendorf's language could be confused. For instance, if you have nonstate money in the form of local levies; what are you going to say about that? Are you saying those become available? What are you saying?

**CHAIRMAN GRAYBILL:** Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman. Mr. Burkhardt, no, I'm certainly not saying that local levies would not be included. It would be my intent to have local moneys construed as being state moneys, regardless if they're raised on the state or local level.

**DELEGATE BURKHARDT:** But as the funds are administered, they're administered locally without going through a state source at the present time, as I understand it.

**DELEGATE CAMPBELL:** That could be. Perhaps Mr. Champoux could better explain that than me.

**DELEGATE BURKHARDT:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Having been the proponent—or the person who had the task of presenting the original majority position, I would move to—or rather speak to defeat Mr. Campbell's motion. It seems to me that what we have added here by Mr. Loendorf is a face-saving thing for all of us. We left the "directly" in—or the "indirectly" in up above. We merely recognize, in the last sentence, the fact that this is now happening, and we trust will happen in the future, and that what he's done has been something that we can live with and can explain to our people. If we come in with this other one, it may be rather awkward in terms of what we mean by "nonstate money".

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** I'll support Mr. Burkhardt's position, and I think, as usual, he's given very good reasons for it. It seems to me that Mr. Campbell's amendment does two things we perhaps do not want to do—well, one at least—and that would allow that the state could distribute money to nonpublic schools even if not designated to them. I don't think we want it to do that. All we wanted it to do in my amendment was prevent federal money from coming into the state just because it happened to be designated in part for nonpublic schools.

**CHAIRMAN GRAYBILL:** Is there further debate on Mr. Campbell's motion to add, in place of Mr. Loendorf's last sentence, his phrase? Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman. I didn't understand what Mr. Loendorf just said. I wonder if he'd say it again, please. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** The amendment that we added—that's been added now, the amendment I proposed—will allow federal moneys to come into the state even if designated in part for nonpublic schools. Now—and it will not require the state, in any way, to—well, it will allow the state to go along with the federal restrictions on that money and accept it. Mr. Campbell's amendment will allow the state to accept the money from federal government, which it can do anyway, but it may allow the state to distribute money from the federal government which is not designated specifically for nonpublic schools, to nonpublic schools, which was Mr. Aronow's concern.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. I'd like to speak in opposition to Mr. Campbell's amendment. I feel that it's totally unnecessary. I'm a member of a committee in Great Falls where aid to educationally—aid to children who are gifted—and this program completely circumvents our present constitutional provision, because the money goes directly from the federal government to the school district. And the children in Great Falls who attend parochial schools go to the public schools for this special educational program, which proves that money coming in from the federal government, going to school districts is now being accepted. And so I really feel that this amendment is completely unnecessary.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** I'd like to—Mr. President, I'd like to rise in opposition to Mr. Campbell's proposed amendment. I think that maybe we're overlooking something here. The wording of this particular amendment could possibly include grants from federal Forest Service lands to the State of Montana for education and other purposes. It could include grants from the Bureau of Land Management to the various counties. It could include floodplain land moneys that come into the counties for school and road purposes, and apparently it can include all of those things. So I think we're getting into pretty dangerous territory here if we adopt this amendment.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Campbell's motion to add the phrase "nothing herein shall prevent nonstate money from being distributed for the benefit of all students within the State of Montana", in place of the language we adopted in Mr. Loendorf's amendment. Mr. Wilson.

**DELEGATE WILSON:** Could we have a roll call vote, please?

**CHAIRMAN GRAYBILL:** Mr. Wilson, Mr. Campbell wants to close. Mr. Campbell.

**DELEGATE CAMPBELL:** Fellow delegates. It's rarely that everyone agrees so unanimously on one of my proposals. (Laughter) But I do feel that Montana, being one of the few—and I've checked with Mr. Champoux—seven or eight states—that has this provision in there, may very well be denied, in the future, some funds merely because we are saying that the Congress should state explicitly that it must be made to nonpublic education. And I would feel that it would be a great disservice to this state—and I do not feel that Montana and the minority of states that are with it on this point would be enough to change the mind of Congress to make this provision simply for our benefit and because we put this provision in our Constitution. I really feel that if federal sources are given to the state for distributions in a program similar to a hot lunch program for distribution to all the children in the state, I certainly think they should receive them. Winston Churchill once said that a community can make no finer investment than putting milk into babies. And I don't think he meant just Protestant babies or just Catholic babies. Now, as you know, today we receive funds through the federal government through our ADC program to help children. Now, they don't say through those programs that if you give it to a Catholic family, that you are entangling church and state. We all agree there are certain things that young people need to be helped with, and I feel that my amendment would allow the Legislature to distribute these funds to all children based on need rather than on religious preference. And certainly if we denied funds like an ADC program to a family because it's Catholic, or because it's Protestant, would only leave one group open that could receive the funds, those of the family that had no religious preference at all. I don't think that's intended. I think that my amendment would not open new areas; we would still have the protection for State of Montana funds from not being diverted. And I feel that if the need ever arises in the future, we would have problems with the Loendorf sentence at the end; and I would urge you to accept mine. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Foster. Your presence is noted and you may vote.

**DELEGATE FOSTER:** Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux. We're about to have a roll call vote.

**DELEGATE CHAMPOUX:** A point of order, Mr. President, for clarification if I may. May I?

**CHAIRMAN GRAYBILL:** You may state your point, yes.

**DELEGATE CHAMPOUX:** I don't want this assembly to get the impression that I agree with all of Mr. Campbell's statements. I only agree with the first sentence, which says that seven other states have a Blaine-type Amendment. Thank you.

**CHAIRMAN GRAYBILL:** All right. You shoehorned it in on me, Mr. Champoux. (Laughter) The issue is on Mr. Campbell's amendment to replace the language at the end of the Loendorf amendment with the language concerning nothing to prevent nonstate money being distributed to students within the State of Montana. We'll have a roll call vote. So many as shall be in favor, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Nay |
| Artz | Aye |
| Ask | Nay |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Nay |
| Choate | Absent |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |

| | |
|---|---|
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Nay |
| Swanberg | Absent |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 13 delegates voting Aye, 79 voting No.

**CHAIRMAN GRAYBILL:** 79 voting No and 13 Aye, the motion is defeated. We are now back debating Section 6 as amended by Mr. Loendorf. Are there further amendments? Is there further discussion? Are we ready to vote? Members of the body, you have before you on the recommendation of Mr. Burkhardt, when this committee does arise and report after having had under consideration Section 6, as amended, that we recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted as amended. Will the clerk read Section 7.

**CLERK HANSON:** "Section 7. Nondiscrimination in education. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever; nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any public institution of learning on account of sex, race, creed, religion or national origin." Mr. Chairman, Section 7.

**CHAIRMAN GRAYBILL:** Mr. Noble.

**DELEGATE NOBLE:** Mr. Chairman. As the committee rise and report after having this section under consideration, I move the adoption.

**CHAIRMAN GRAYBILL:** Very well. Is there any discussion of Section 7?

**DELEGATE NOBLE:** I think it's self-explanatory. It's about like the old Constitution, with the addition of "race, creed" and "religion or national origin". Other than that, it's the same as what we have.

**CHAIRMAN GRAYBILL:** Very well. With the addition of the words about religion and national origin, is there any discussion about this section?

Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman. I merely move—or rise for a bit of discussion and clarification in regard to this section it referred to as the nondiscrimination section. And it states that no qualification, along with the other words, shall be required to attend school. It has disturbed me over the years—and particularly in the later years, but over the years—that school boards will set up some arbitrary qualifications that a student must meet before they can attend school. Quite a few years ago, when the styles of ladies' dresses were coming higher, the Glasgow School Board said that the girls could not come to school if they wore stylish dresses. Just lately, we had a case that's been brought clear to the courts, both in Hamilton and in Columbia Falls, in which the school board arbitrarily set up a requirement on how often you were supposed to get a haircut. And the court upheld the student in Hamilton. He could not go to school because his hair was a little bit long—similarly applied to the students in Columbia Falls. Now, I would like to know if this word "qualification" in the Constitution will prohibit such actions by school boards. And if this word has been in here as it is said and as will I agree to—then what right has the Supreme Courts or—this didn't go to the Supreme Court; I think it may. But the local courts can state that school boards can set up qualifications before a student is allowed to come to school. Now, the—I'm perfectly willing to accept the fact that maybe some qualifications as to health might debar the student from coming to school, if it's a contagious disease or something along that particular line—he might want to come to school. But I would like to get some opinions from the various judicial lines here, if this word will restrict and make the school boards allow students to come to school where they are properly dressed and hair length and various other things.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. As a member of the majority on this, it's my understanding that that has been interpreted only as saying "no religious or partisan test or qualification". I think it refers only to the religious or partisan test or qualification and doesn't go into these other matters in this Constitution. I think that's the reason why that has not been a factor in determining these, as near as I know, Mr. Harlow.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman. I'll now move to delete Section 7.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Brown has made a motion to delete Section 7 in its entirety.

Mr. Brown.

**DELEGATE BROWN:** I'm not moving to delete this because I believe in discrimination in education. I want to make that clear. But Section 4 of our Bill of Rights fully covers any discrimination in the exercise of any of your civil and political rights and covers race, color, sex, cultures, social, political, religious ideas. And this is not in most Educational Articles in other constitutions. I feel it's surplus, because it's been covered. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** As Chairman of the committee, I feel I have to say something about this. I hadn't considered that, Mr. Brown, even though I was the mover of that particular one on discrimination in the Bill of Rights. We were concerned here about some problems in terms, well, first of all, of teachers that came up before the committee, teachers in certain areas. And, I believe, one of our committee members even made the point that he had experienced this where the community had been totally of one denomination—regardless of what it had been—and there'd been discrimination in that community in terms of hiring. That was one of the conditions. The other one was, if you'll notice, at the end, we've added the original statement said—had something concerning just sex in terms of—I mean—discrimination in terms of higher education on the basis of sex. And we've extended it. Now, if you can satisfy us that this clause in the Bill of Rights does cover that, I would certainly be willing to accept it.

**CHAIRMAN GRAYBILL:** Mrs. Cain.

**DELEGATE CAIN:** The consideration of the rights of teachers in placement without regard to religion and other external personal choices has come full-cycle since I first began to teach. When I first began asking for teacher positions, there was a surplus of qualified teachers; there were more available than there were vacancies. A good opening was often obtained by political pull. Many application forms asked such questions as, "What is your church affiliation? Do you attend weekly? Would you be willing to teach a Sunday School class? Do you play cards? Do you smoke? Do you drink? Do you support a political party?" Those days passed, and we came into a period where there were more vacancies than there were qualified—and I emphasize qualified applicants. Now, we are again in a period like the late thirties, when teachers are unable to find jobs. Could it not happen again?

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, will Mr. Champoux yield to a question?

**DELEGATE CHAMPOUX:** Reluctantly.

**DELEGATE ROBINSON:** Mr. Champoux. On your—this last section, dealing with discrimination, I noticed that in the Education proposed draft as compared with the Bill of Rights, you leave out political ideas, which was included in the Bill of Rights. And I—was that intentional?

**DELEGATE CHAMPOUX:** No ma'am, but we heard you had an amendment to put in there. We haven't seen it yet, but we heard.

**DELEGATE ROBINSON:** Well, if Mr. Brown's move to delete does not prevail, I will offer such an amendment. Will you yield to one more question?

**DELEGATE CHAMPOUX:** I certainly will.

**DELEGATE ROBINSON:** The first section, as Mr. Davis indicated, has been interpreted to be religious or partisan test or qualifications. I'm not sure exactly what a partisan test is. But I think at a different time, and it may be a different court, could that not be interpreted to say that no test of any qualification could be required? That is, the University System would always be precluded from having entrance exams, for example?

**DELEGATE CHAMPOUX:** Well, in reference to your—may I answer her?

**CHAIRMAN GRAYBILL:** Sure.

**DELEGATE CHAMPOUX:** In reference to your first question, a partisan test is usually interpreted as meaning belonging to one particular political party, for instance. These two lost words, "test" and "qualification", are nouns, as you well know, with the adjective modifier "religious" and "partisan". Now, it has held up for the many years since the Constitution has been in force, where it has never been subjected to the test whether that means that there are no qualifications that apply. Where that is precedent, I would say that it has never been challenged, to my knowledge, on the basis of the argument you make. I think it would stand the test of time. In reference to Mr. Harlow's—may I mention that or not?

**CHAIRMAN GRAYBILL:** Mr. Champoux, you may have the floor.

**DELEGATE CHAMPOUX:** He brought up a good point—I think Mr. Harlow brought up a good point, and, Paul, I don't think at this point that our Constitution covers that, personally. And from the judges' opinions, apparently it doesn't, and I think it's certainly a lack. If you look at—there are two other things here, though, in reference to Mr. Brown's deletion movement, that are not applicable to the Bill of Rights section as I see it. For instance, it says here, "nor shall attendance be required in any religious service whatever". But more important than that, it says "nor shall any sectarian tenets be taught in any public educational institution of the state". Now, if we eliminate the entire section, we're going to be eliminating those two points too, and I think you should consider that. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Will Mr. Champoux yield to just one further question?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** Yes, I yield.

**DELEGATE ROBINSON:** It was not clear to me from your answer whether or not your committee dealt with the question of whether or not the institutions of higher learning in Montana could or could not use LSATs, or any kind of a test, for admission to the University.

**DELEGATE CHAMPOUX:** Well, Mrs. Robinson, I didn't grab that question to begin with, or understand it. The answer is "No, we haven't; we didn't." And I know of no case that's been—come before the courts using this clause as a basis to support a test for entrance. It could perhaps; I don't know.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman. I'll briefly close. I think the questions have showed that we just keep adding things; we get more confusion. And we do have religious studies in our institutions of higher learning—I know Missoula does—and discrimination is completely covered very broadly by the Bill of Rights. And I repeat, I see no reason to put more of this into the Constitution. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Very well. Apparently, we're ready to vote on Mr. Brown's issue of deleting Section 7 in its entirety.

**DELEGATE FOSTER:** Roll call.

**CHAIRMAN GRAYBILL:** Mr. Foster, do you want a roll call vote?

**DELEGATE FOSTER:** Please.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of deleting Section 7 in its entirety, vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Cast the ballot.

**DELEGATE HELIKER:** Heliker votes No.

**CHAIRMAN GRAYBILL:** Too bad. You may explain your vote, Mr. Heliker, but you may not change it.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J | Aye |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Aye |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Aye |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Absent |
| Holland | Absent |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |

| | |
|---|---|
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Absent |
| Ward | Aye |
| Warden | Absent |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 33 delegates have voted Aye; 56 have voted No.

**CHAIRMAN GRAYBILL:** 56 having voted No and 33 Aye, the motion fails.

Mr. Heliker, do you want the floor?

**DELEGATE HELIKER:** I got in a little late; I didn't vote. I wanted a No vote recorded.

**CHAIRMAN GRAYBILL:** You can show a No vote in the journal, but you can't record one. Very well. We're discussing Section 7. Is there other discussion?

Mr. Harbaugh, I don't know whether you want this substitute motion mentioned or not.

**DELEGATE HARBAUGH:** I think, Mr. Chairman, in light of the discussion, I would like to move the amendment.

**CHAIRMAN GRAYBILL:** You want to move it?

**DELEGATE HARBAUGH:** Yes.

**CHAIRMAN GRAYBILL:** All right. I had 20 copies made because it's long, and I think people may want to see it. So, Mr. Clerk, will you have several of those—a couple in each row so people have a chance to see it. Now, Mr. Harbaugh, would you like—care to read your amendment? Mr. Clerk, did you keep one? Will the clerk please read Mr. Harbaugh's proposed substitute amendment.

**CLERK HANSON:** "Substitute for Section 7. Mr. Chairman. 'All public educational institutions in this state shall guarantee the integrity of the diverse political, religious, cultural and social sectors of a pluralistic society. No discrimination on the basis of race, sex, religion, creed, or national origin shall be permitted in matters of employment in or admission to any public educational institution.' Signed: Harbaugh."

**CHAIRMAN GRAYBILL:** Mr. Harbaugh has proposed that language as a substitute motion replacing the language in Section 7 as shown in the majority report. You're aware that the printer—the print shop is not open today, so I had 20 copies made on the Xerox so you'd have a chance to look at it if you can share it up and down the aisle a little bit.

Mr. Harbaugh.

**DELEGATE HARBAUGH:** It was not my intention originally to move this, until I heard some of the discussion here on the floor this morning. And there seems to be some sentiment in favor of making some changes in this section. I think we do need a section comparable to the present one that we have, and I move this substitute motion because we did discuss this in our Education Committee and, after quite a lot of discussion, decided to stay with the original section. Possibly, this would be a compromise-type of article. There was a time, certainly, in the history of our educational system where we needed a listing, perhaps, of the sort that is contained in the present section. However, I think that times have changed and that we have seen that strict statements, such as the one in Article IX, have been construed sometimes in such a way that they prohibit some of the things that we maybe didn't want to prohibit; study of maybe certain religious material or this kind of thing in the public schools. And really, all I'm doing is trying to restate the tenets of the present section in a more positive language and term, so that it would not prohibit some of the things that I think we find desirable today in our educational institutions. Thank you.

**CHAIRMAN GRAYBILL:** Very well. Is there discussion?

Mr. Noble.

**DELEGATE NOBLE:** As a member of the committee and the one who proposed this section, I resist Mr. Harbaugh's amendment. We talked in the committee, and the committee voted unanimously to adopt the other one.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** May I ask Mr. Champoux a question?

**DELEGATE CHAMPOUX:** I yield.

**DELEGATE BUGBEE:** Mr. Champoux. Again, I don't understand—when you use the word "sectarian tenets to be taught in any public educational institution", what do you do about a Department of Religious Studies? I agree with Mr. Brown. It seems to me that this is something to be studied and thought about and learned about.

**DELEGATE CHAMPOUX:** Mr. Brown had closed, and, of course, under the rules you can't stand up unless you can sneak one in, and I've already gotten one in this morning so I wasn't going to try again. But if you look at the word "taught" there—we brought this up in committee and we felt that the word "taught" has a, you know, a different connotation than the word "study". You won't buy that?

**DELEGATE BUGBEE:** No.

**DELEGATE CHAMPOUX:** All right. Well, (Laughter) if you go back to the original in the old Constitution, it says practically the same thing. As a matter of fact, in that area, it does say exactly the same thing. And the intent, of course, of the original section was to keep a public school teacher from teaching his particular religious tenets in the classroom. And this is the way it's been interpreted by the courts, as we understand it. Now, the University has, of course, had a School of Religion. I'm not quite sure, it isn't directly affiliated with the school—the University, is it? Directly is a part of the University?

**DELEGATE BUGBEE:** Yes, it is.

**DELEGATE CHAMPOUX:** Yeah, I knew it wasn't at one time. All right.

**CHAIRMAN GRAYBILL:** Just let Mr. Champoux answer. And then if you want the floor, I'll give it back to you. Don't pay any attention to his inquiries during his answer. (Laughter)

**DELEGATE CHAMPOUX:** Well, I'm a different kind of teacher. We, you know, we go back and forth in my classroom. Well, anyway—

**CHAIRMAN GRAYBILL:** This is a different kind of classroom, Mr. Champoux. (Laughter)

**DELEGATE CHAMPOUX:** Yes, wait till this afternoon. Okay, now the only thing I can say at this point is that since the University has been able to do it up to this point without objection, I would say it's still allowed.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Champoux, I'd just like to answer. I think the thing—to me anyway, it's a can of worms. I'd also like to add that the Department of Religious Studies, the University of Montana, is the most prestigious in the country. I don't think many people know that. Also, they are bringing in a new person this year to teach, who is probably the best-known person in the world to teach Indian religion. And I—it's a—when you teach, you study—you study, somebody has to teach it.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. I think Mrs. Bugbee is right on to a point that is essential, and I think this is possibly one of the main reasons Mr. Harbaugh rewrote this. And looking it over this quickly, I like his rewriting, and I think I will support it.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. I rise in opposition to the substitute motion. I think this present section of nondiscrimination in education is well understood by the people. It's been interpreted many times, and I can't see why we should substitute something that isn't as good for something that is good.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Fellow delegates. In reading over the amendment, the words that impress me very much and that will, if you read them carefully, will allay the fears you may have. I think it—"shall guarantee the integrity" and "no discrimination". Certainly if there's any type of teaching, as Mr. Champoux would indicate, it would violate both of those tenets. And it seems adequately taken care of and yet allows the other factor which, if you're going to study in school, seems to be a very important one.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. Since we do not have copies of this amendment and since we are working on the Education Article, I think that we should be educated as to what we're voting on. I wonder if we could please have Mr. Harlow's amendment read to us.

**CHAIRMAN GRAYBILL:** Right. There are some copies near you. Someone could perhaps hand you one. I'll reread it. "All public educational institutions in this state shall guarantee the integrity of the diverse political, religious, cultural and social sectors of a pluralistic society. No discrimination on the basis of race, sex, religion, creed, or national origin shall be permitted in matters of employment in or admission to any public educational institution." So the first sentence says "shall guarantee the integrity of the diverse political, religious", and so forth, "sectors" and the second one says "no discrimination"—with a big, long list of things—"shall be permitted in employment or admission to any education institution."

Mr. Woodmansey.

**DELEGATE WOODMANSEY:** I would like to direct a couple of questions to Mr. Harbaugh and, I think, the body here, if Mr. Harbaugh—if he would accede to the questions. There are a few words in the first part of your amendment here that bother me. First of all, you talk about the diverse political, religious, cultural and social sectors. The word "diverse" bothers me; the word "sectors" bothers me. You go on a little bit further, it says "pluralistic society". To tell you the truth, I'd like to know what you mean by each of these words. I don't understand them. I feel it's a poor choice in this.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I'll try to respond to that. "Diverse", in my understanding of the word, means the various. I suppose you could substitute the word "various", the various groups that are enumerated here. The word "sector" seems to me also to be fairly clear. You could use the word "segment" if you want. That, I assume, would be parallel to the word "sector". The word "pluralistic" is one that is more and more being employed by the courts. In fact, if you'll read some of the recent Supreme Court decisions regarding the 1st Amendment, you'll find that they use the word "pluralistic" quite freely. And it's, I think, accepted by almost everyone that we live in a pluralistic society, or that this is the intention, at least, of the great American dream—is that people who share different forms of culture, different religions, and so forth, live together in this society and that one of these particular segments or beliefs of society does not dominate any other. This is what I mean by "pluralism".

**CHAIRMAN GRAYBILL:** Mr. Woodmansey.

**DELEGATE WOODMANSEY:** I think that answers my question, and I would resist the amendment. I feel it does nothing to add to the present Constitution. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** I feel, in rising to speak to this, that there would be a couple of ways to go. If we are trying to state something about nondiscrimination in education, we might amend it by striking the first sentence and just stating no discrimination will be allowed. We're trying to say both a positive and a negative thing under a title of no discrimination, and I think that bears some scrutiny. The other thought is the former one which has been in our Constitution, has—in speaking to the teaching of sectarian tenets, is a different concept than Mrs. Bugbee was referring to, where you have an attempt to understand in depth the meaning and the history and the philosophy of various religious groups. That's one thing. Another thing is to advocate a particular tenet, and that is what this section originally was intended to protect, that you would not simply be, as in the University, examining in depth various philosophies and religions and thinking about them with some adult perspective. You would, perhaps, without this statement, be subjecting very young children to the sect prejudices of a particular teacher. And I think there are a couple of things here that are involved. As far as the one that Mr. Harbaugh has submitted, I assume that our educational institutions have some devotion to the search for truth. And the search for truth may or may not guarantee the integrity of every diverse political, religious cultural, social sector as it comes to us. It bears some thought.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. I think that what we're concerned about here is the difference between teaching and studying and indoctrination. And I believe that not only on the University level, but also down to the grade schools, as students become more involved in studies of the cultures of the world, they cannot really study these without studying the religious beliefs and tenets of those people. And it's possible that what we ought to try to do is to incorporate prohibition against indoctrination, rather [than] against teaching in this section.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Would Mr. Harbaugh yield to a few questions, please?

**CHAIRMAN GRAYBILL:** Mr. Harbaugh?

**DELEGATE HARBAUGH:** I'll try.

**DELEGATE CHAMPOUX:** Now, Gene, you and I and the rest of the committee had a long discussion during this section on secularism. Remember? And some concerns were expressed that something called secularism, which I'm going to have you define here in a minute if you would, is becoming prominent in our schools. And perhaps there should be done—something else should be done to balance this a bit. Now, first of all, would you define secularism for me, sir?

**DELEGATE HARBAUGH:** Secularism? Well, secularism is not easy to define. I believe, though, that in one of the court cases—Supreme Court cases—I can't recall just exactly which one—one of the Justices did, in effect, say that the teaching of certain tenets in the public school could amount to what I believe he described as a secular religion. And my understanding of it would be that, basically, it's the promotion of sort of an agnostic point of view in which we say basically this—we can't really know the truth about any of the religious beliefs, and therefore that's what we'll teach, agnosticism. And I suppose secularism would have to be equated in some sense with that and would, since we can't know the truth about these other things, would then say the truth is that the scientific, technological things that we can see and touch, and so forth, are basically the things we must believe in.

**DELEGATE CHAMPOUX:** May I ask him another question?

**CHAIRMAN GRAYBILL:** Yes, Mr. Champoux.

**DELEGATE CHAMPOUX:** All right, now, when we talk about a pluralistic society, is it your intent, then, by this—for the record perhaps to get more religion in our schools?

**DELEGATE HARBAUGH:** No. My intent is that, as Mrs. Eck stated, that we simply not stifle the freedom of the student to study various beliefs and points of view. It's not my intention to make the public school into an institution that instructs youngsters or promotes any particular religious point of view.

**DELEGATE CHAMPOUX:** Thank you very much. I've brought this out, sir, for the record, so that we could be clear on this. We had a long, extended discussion. Now, I simply acted as the devil's advocate at this point to bring this point out. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman and delegates. I think we're concerned about this matter of "taught", and I think it's justified. I'm sure that we're not trying to hinder the teaching of religion in any University System; the comparative religions in the high schools or grade schools. What we are concerned about is promoting one particular religion over another. So as a substitute motion for all motions pending, I move to amend, on page 22 of Section 7, in line 21, strike the word "any" and insert the word "one". In line 22, strike the "s" on "tenets". Strike the word "taught" and insert in lieu thereof "advocated above another". So we will have it reading like this: "nor shall one sectarian tenet be advocated above another in any public educational institution of the state."

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr.—just a minute now.

**DELEGATE AASHEIM:** I shall repeat—

**CHAIRMAN GRAYBILL:** No, just a minute, don't repeat yet. Mr. Harbaugh's amendment was styled a substitute amendment to replace Section 6 with a different set of language. We have not allowed substitute amendments to substitute amendments. Now that seems to me to put the Chair in the position of saying that you may amend Mr. Harbaugh's. And I suppose I could allow you to amend it by striking it in its entirety and putting in this other with some changes, but that amounts to a substitute amendment. I think you may explain the purpose that you have here, Mr. Aasheim, which I think you have done, and you may do it further if you feel. I think we've got to have the sense of the body on what we're doing with Mr. Harbaugh's motion before we get into restructuring another one, or else we're going to have substitute motions on substitute motions. And you wouldn't want Mrs. Robinson's substitute motion, which she has up here, on yours, so I think you may explain it, and then I'll rule it out of order. And then we'll consider Mr. Harbaugh's and we'll come back to you.

**DELEGATE AASHEIM:** Your point is well taken, Mr. Chairman. And I like Mr. Harbaugh's ideas. But we have school teachers and we have school professors asking questions about the terminology and meaning of these terms. One of my directives when coming here was to make this language in this Constitution plain, so that eighth graders can understand it, and maybe sixth graders can understand it. I like—as I said before, I like Mr. Harbaugh's meaning, but I also like the original terminology, the wording of our present Constitution. I think what we're concerned about is the meaning of the word "taught". We don't want to prevent the evaluation of religions in our public schools or in our colleges. And with that, I'll close.

**CHAIRMAN GRAYBILL:** Very well. So that everyone understands, Mr. Harbaugh has a substitute motion, and it can be amended once; but other than that, Mr. Aasheim has a proposal for amending Section 7, if it doesn't pass. Mrs. Robinson has such a proposal, and Mr. Harper has such a proposal. One of them deals with the word "taught"; one of them puts in another category to be protected—namely, political beliefs. Now, with that background, we can go ahead.

Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. I, too, like the Harbaugh proposition, and I think we would do better to amend it than to replace it. That—and for that reason, I'll ask Mr. Harbaugh for a question, please.

**DELEGATE HARBAUGH:** Yes, I yield.

**DELEGATE ARBANAS:** Do you think that we could clear up the matter by an amendment such as this at the end of your statement—by just saying simply, "no indoctrination of sectarian tenets shall be allowed"? It seems to me—I'm asking you first.

**DELEGATE HARBAUGH:** Mr. Chairman. Mr. Harlow has just sent up an amendment to the Chair to that effect, and I would heartily endorse that.

**DELEGATE ARBANAS:** I'd like to—having heard the answer, then, I would like to make that amendment, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Well, now, do you want to make it before you hear Mr. Harlow's? It's already in writing on my desk.

**DELEGATE ARBANAS:** Okay, very good.

**CHAIRMAN GRAYBILL:** Okay, Mr. Harlow, are you ready to have your amendment put?

**DELEGATE HARLOW:** Yes.

**CHAIRMAN GRAYBILL:** Very well. Mr. Harlow would amend Mr. Harbaugh's language by adding, at the bottom—and those of you who have the sheet might want to write this on it: "nor shall any sectarian tenets be promoted in any public educational institution of the state." "Nor shall any sectarian tenets"—T-E-N-E-T-S—"be promoted in any public educational institution of the state". Mr. Harlow, I'll allow your amendment.

Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman. I move that amendment. I do it primarily and exclusively for the purpose of overcoming some of the objections to Mr. Harbaugh's amendment. This, I think, takes out the fear that has been expressed here. And if I may support the amendment in its entirety—that is, Mr. Harbaugh's amendment and this slight amendment I gave here—I think it overcomes one of the objections that I had to original Section 7, in that it barred students from going to school because they were not conformists, because they had a little different thinking about their personal appearance. And I think it is sad here that this body, and particularly various members of it, are so concerned and so carried on and so want to perpetuate conformity in our society. Many years ago, maybe conformity was very fine—or it was accepted, let me put it that way—maybe it wasn't so fine. But we had conformity. As Mrs. Cain brought out, when she first applied for a teacher's certificate, there was various restrictions on what she could or couldn't do. I remember the same thing on my first application, or my first contract. I was not allowed to go to Billings more than two times in a semester. I thought Billings was all right. Of course, I just heard the remark here that that was a good thing to put in the contract to keep you out of Billings. (Laughter) It may have been at that time, but I think if such a contract was proposed today, it would be absurdity. And the same thing, I think, is wrong in allowing the school boards to put up various absurd conformities for children to go to school. That is my problem and my paramount reason for trying to amend this section of the Constitution to make it so that school boards cannot discriminate against the students. It has been done here in the past and is being done now. I'm hoping that this amendment that we have in here now will meet all of those qualifications. My qualifications, which allows no discrimination against a student because of his personal thoughts and no discrimination or not allowing—I mean, not allowing the schools to take over the teaching of a certain specific kind of religion or thought. We must keep this broader thought in mind: the amendment that was applied earlier in this article, that allowed us to teach Indian culture. I think if we get down too fine on the—on this discrimination, that we will nullify that amendment that was put on. I hope this amendment of mine prevails and then the amendment of Mr. Harbaugh's prevails. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I don't want to quibble on the words, but I think there's a concern here for what Mrs. Bugbee perhaps, was concerned about when we used the word "promoted". I don't know if you see that that way, Mrs. Bugbee. What's the difference between "teaching" and "promoted"? Or if you're lucky, at the end of the year—

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Champoux, I agree with you. And I think there is—there will be confusion with the word "promoted". And I prefer Mrs. Eck's use of the word "advocated". I think if that were substituted, if "advocated" were put in, it would be adequate.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Harlow's amendment. I don't see why you'd need to close, Mr. Harlow. We've only had a minor exchange. Do you want to close?

**DELEGATE HARLOW:** The word definition came up here. The word "advocate" was considered better than the word "promote". If I may, at this time, cancel out the word "promoted" and put in the word "advocated".

**CHAIRMAN GRAYBILL:** Is there any objection to allowing Mr. Harlow to substitute the word "advocated" for the word "promoted" in his amendment? Hearing none, it'll be done. Therefore, the issue arises on Mr. Harlow's amendment to add to Mr. Harbaugh's amendment this language: "nor shall any sectarian tenets be advocated in any public educational institution of this state". So many as shall be in favor of that amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. So many as are in favor, say Aye—vote Aye on the voting machines; so many as are opposed, vote No. Has every delegate voted?
(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** Very well. The vote'll be closed. The vote is 42 to 41 in favor, so it's adopted. Now, the issue is on Mr. Harbaugh's amendment that "all public educational institutions of the state shall guarantee the integrity of diverse political", and so forth, and second, No discriminatory— "no discrimination based on sex, religion, or creed shall be permitted", with the addition of this sentence: "nor shall any sectarian tenets be advocated in any public educational institution in this state." That's the issue.
Mr. Burkhardt.

**DELEGATE BURKHARDT:** (Inaudible)

**CHAIRMAN GRAYBILL:** Just a moment. We'll be at ease for one minute while we change the tape. Very well. We're back in order, Mr. Burkhardt. The issue is Mr. Harbaugh's amended substitute motion.

**DELEGATE BURKHARDT:** Mr. Chairman, would it be in order at this time to ask for a noon recess and get a chance to look at some of this and talk about it with the proponents and opponents?

**CHAIRMAN GRAYBILL:** Well, the Chair is very desirous of completing Section 7. I had expected to complete 7 and 8 before noon. We are working a little late. Some of the people may go to the prayer luncheon, and I told them I wouldn't recess until 12:30 at least. I don't see any reason why we can't finish it. We got lots of motions up here to go.

**DELEGATE BURKHARDT:** All right. I wonder if Davis is in the room—I wonder if Mr. Dahood would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** I yield to a question, Mr. Chairman.

**DELEGATE BURKHARDT:** Wade, by now you're an authority on so many things (Laughter) we might as well put you—

**DELEGATE DAHOOD:** The newspapers would disagree with you, Delegate Burkhardt.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt, I think this comes as a rude shock. (Laughter)

**DELEGATE BURKHARDT:** I'm concerned, and I thought maybe as a lawyer, sir, you could speak to this. As I read it, we are here guaranteeing the integrity of diverse sectors of a pluralistic society. It doesn't say we're defending them in school. We're on record to go out and promote them and defend them everywhere. I wonder how we're going to afford that and other questions.

**DELEGATE DAHOOD:** You wonder how we're going to afford that?

**DELEGATE BURKHARDT:** No, I wonder if you read it the same way I do in terms of what we're guaranteeing by the language of this amendment. Do you have it in front of you, as Gene Harbaugh has—

**DELEGATE DAHOOD:** Yes, and I really have some doubt. In fact, I've expressed my opinion, and probably what we ought to do is find one sentence to indicate that we're not going to have any discrimination of any kind in education. And I think we'd be a lot better off.

**DELEGATE BURKHARDT:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** I'll close on my motion if there are no more—

**CHAIRMAN GRAYBILL:** Mr. Wilson, do you want to speak?

**DELEGATE WILSON:** Yes, Mr. President. I think the old section has served us well over the years. I don't see any quarrel with it at all. They've only added six words to the old section. I think this is sufficient and adequate. I think we know what we're voting on when we vote for it. I think the courts have determined that this is right, and I don't see any need to borrow trouble or stir up dissention. And I would urge the adoption of the majority report.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I'd like to direct a question to Mr. Harbaugh.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE ROMNEY:** Mr. Harbaugh, there was some discussion about whether the cultural and social sectors would lead us to a matter of dress—hair for boys for example, and dungarees for girls attending school. Is that included in your—for the record?

**DELEGATE HARBAUGH:** Mr. Romney, I doubt that it is. The courts have had some of these cases under advisement in the past, and I think that what we come up against in those questions is a question of the authority of local school boards and the autonomy of the local districts. And I doubt very much that this is directed to that particular question.

**CHAIRMAN GRAYBILL:** Very well. Is there other discussion? Now you may close, Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I'd just like to say, in closing, that in rewriting this section, I don't think that we are doing anything radical or extreme, because in the annotations on this section, there are none in the old Constitution. So to say that the old one served us well, I'm not sure there's truth to that. It hasn't served us at all. The question hasn't come into the courts, and—at least in Montana, and I think this might be a more plausible way of approaching the question. I close.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Harbaugh's motion to substitute for Section 7 the language: "All public educational institutions in this state shall guarantee the integrity of the diverse political, religious, cultural and social sectors of a pluralistic society. No discrimination on the basis of race, sex, religion, creed, or national origin shall be permitted in matters of employment in or admission to any public educational institution nor shall any sectarian tenets be advocated in any public educational institution of the state." So many as shall be in favor of that amendment, vote Aye on the voting machines; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Aye |
| Ask | Nay |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Absent |
| Brown | Absent |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Absent |
| Conover | Nay |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Absent |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Absent |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Absent |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Absent |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Absent |
| Siderius | Aye |
| Simon | Nay |
| Skari | Absent |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |

| | |
|---|---|
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 23 delegates have voted Aye; 62 have voted No.

**CHAIRMAN GRAYBILL:** 62 having voted No and 23 having voted Aye, the motion is defeated.

Mrs. Robinson, you're next. Are you ready for your motion to be read?

**DELEGATE ROBINSON:** Yes.

**CHAIRMAN GRAYBILL:** Mr. Clerk.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 7 of the Education Article, page 5, line 23, by adding the following words and punctuation—quote: 'political beliefs'—end of quote—after the word—quote: 'religion'—end of quote. Signed: Robinson."

**CHAIRMAN GRAYBILL:** All right, Mrs. Robinson wants to add an amendment to Section 7, on line 23, to add the words "political belief", so that it says: "No person may be debarred from admission to any public institution of learning on account of sex, race, creed, religion, political beliefs, or national origin." In other words, she's added "political beliefs" to the list of things for which you cannot be kept out of school.

Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. Chairman. This is just to bring this up to what we passed in the Bill of Rights. And also, I'm really concerned about getting this "political beliefs" in here. I suspect that in a year or so, I may have to go to Butte to apply for a job as a schoolteacher, and with my conservative Republican voting record (Laughter), I wouldn't want them to refuse to hire me because of my political beliefs.

**CHAIRMAN GRAYBILL:** Is there discussion? Very well. The issue is on Mrs. Robinson's proposal to add the words "political beliefs" to the list of things for which you cannot be debarred admission to public institutions of learning. So many as shall be in favor of that, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and she wins.

Very well, Mr. Harper, you're next. Do you want yours read?

**DELEGATE HARPER:** Mr. Chairman, either mine or Mr. Aasheim's. Does he have one before you?

**CHAIRMAN GRAYBILL:** He doesn't have one written. Will the clerk read Mr. Harper's here.

**CLERK SMITH:** "Mr. Chairman. I move to amend the Education Article, page 5, Section 7, line 20, by changing the word 'taught' to the word 'advocated'. Signed: Harper."

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper's point is to change the word "taught" to the word "advocated" on line 20 in Section 7.

Mr. Harper.

**DELEGATE HARPER:** It's a one-word change, and I think it strikes at many of the comments that have been made here, so I won't belabor the point. I suppose most of us have had experience with this kind of a conflict in the minds of people—administrators and teachers in our public schools, as to just how far they can go in even bringing up religious subjects. Mr. Champoux said a moment ago that they didn't mind people studying them, but we didn't want them taught. Well, that's hard to do. It's pretty hard for any person to bring up a subject, in a sense, without teaching it, though it was possible when I was a student, I'm sure of that. The school person—one schoolteacher, for example, invited me into a class on English Literature to talk about the Book of Job in the Bible. The next year, the same course was taught by another teacher, who felt that this would be a religious imposition on the students, and so the format of the course was changed. It didn't make any particular difference to me. I simply use it as an illustration of the fact that the word "taught" does mean different things to different people. I think the word—a word like "advocated", as Mr. Aasheim and I are suggesting, seems to be more directly to the point of what this whole section is about.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman. I concur with Mr. Harper's suggestion here, inserting the word "advocated". After consideration, I believe mine might have been in violation of the federal Constitution, because then an institution could have advocated two religions which would be, I would say, in violation. So I concur with eliminating the word "taught" and substituting "advocated".

**CHAIRMAN GRAYBILL:** Is there other discussion?

Mr. Rebal.

**DELEGATE REBAL:** Mr. Chairman. I believe we're trying to write words into a document that has already served us well. And it seems to me that we are getting away from the framework of a constitution and trying to write in words that we are not certain ourselves of the meanings thereof. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Studer. Oh, Mr. Studer was stretching.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. As I understand this, we're dealing with placing the word "advocated" in, in place of "taught" in line 20?

**CHAIRMAN GRAYBILL:** That's right. So it says, "nor shall any sectarian tenet be advocated in any public educational institution of the state."

**DELEGATE ROMNEY:** Very well.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Harper's amendment, which would add the word "advocated" in place of "taught", so that the phrase would be "nor shall any sectarian tenets be advocated in any public institution." So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's amended.

Well, Mr. Foster, I guess you're next. Would you like us to read yours, Mr. Foster?

**DELEGATE FOSTER:** Please, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Clerk, would you read Mr. Foster's amendment.

**CLERK SMITH:** "Mr. Chairman. I move to amend the Education Article, Section 7, page 22, line 21, after 'whatever', and delete the remainder of the section."

**CHAIRMAN GRAYBILL:** Well, let me have it, and I'll see if I can read it. Put a period after the word "whatever". The word "whatever" doesn't appear on that line, Mr.—oh, you're on page 22. Well, we'll have to transpose here. All right, now, if you go to your books, on line—it's on page 22, line 21, and on page 5, it's line 19. He wants to put a period after the word "whatever", so that the—Section 7 would read—and strike the rest—"No religious or partisan test or qualification shall ever be required of any person as a condition for admission to any public educational institution of the state, either as teacher or student, nor shall attendance be required at any religious services whatever." And then, he wants to leave out the rest of it about sectarian tenets and being debarred from admission on account of sex, religion, creed, public beliefs or national origins.

Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. The basic line of my reasoning here is the same as presented by Delegate Brown. However, I do feel that it's necessary to retain the provisions which come in the first portion of this section. "No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student, nor shall attendance be required at any religious services whatever." And I can accept the fact that some of you may have concerns about deleting this wording. However, I think the lengthy discussion that we have had in the area of trying to prescribe what type of freedom or limitations on freedom in the area of studies, in the area of activities of our institutions, it's clear that we're getting into an area which we really shouldn't be getting into in the Constitution. I refer you to Section 4 in the Bill of Rights Article in which we state, "The dignity of the human being is inviolable. No person shall be denied the equal protection of the law nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas by any person, firm, corporation, or institution or by the state, its agencies or subdivisions." And I submit that what we're concerned about here is amply covered in our new section as written in the Bill of Rights. And I see no reason to belabor this argument, and I feel that the amendment, as presented, should be adopted. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Mr. Harper's amendment would put a period after the word "whatever" on line 19, page 5, of Section 7 and would delete the reference to sectarian tenets and to the phrase that says, "nor shall any person be debarred from admission to any public institution on account of sex, race, creed, religion, political beliefs, or natural origins." I'll amend "Harper" to "Foster"; it's Mr. Foster's amendment to strike the last half of Section 7. So many as shall be in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and it's defeated. Now, ladies and gentlemen, you have for your consideration Section 7. I have no amendments up.
Mrs. Bugbee.

**DELEGATE BUGBEE:** May I ask Mr. Champoux a question?

**DELEGATE CHAMPOUX:** Anytime, Mrs. Bugbee.

**DELEGATE BUGBEE:** Thank you. You talked previously about that word "qualification".

**DELEGATE CHAMPOUX:** Yes.

**DELEGATE BUGBEE:** You think there's no problem there?

**DELEGATE CHAMPOUX:** I wouldn't say that. What I'm basing my conclusion on is the past record of the courts. That's all I'm basing it on. I think Mr. Davis will substantiate me on that, that we haven't had any problems on that. Whether we will in the future, who knows?

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman. May I ask Mr. Dahood to yield, please?

**DELEGATE DAHOOD:** Yes.

**DELEGATE BUGBEE:** Mr. Dahood, what's your opinion of that word?

**DELEGATE DAHOOD:** I'm bothered by the word "qualification". I suppose somebody could use it in a way in which it's not intended. I regret that Delegate Foster's amendment didn't carry, and then perhaps we could have gone back to the word "qualification"—had something that's going to carry out our intent. But I could see where someone could cause some problem with respect to "qualification".

**CHAIRMAN GRAYBILL:** Mrs. Bugbee and Mr. Dahood. May the Chair observe that Mr. Davis explained at the beginning of this, and I think it's not an unreasonable explanation, that the word "qualification" is modified by "religious" and "partisan". It's religious qualifications and partisan qualifications which the Constitution has been held so far to prescribe. Now, if you want to take it out of there, fine, but that's Mr. Davis' explanation.
Mr. Davis.

**DELEGATE DAVIS:** Mr. President. This was placed in the Constitution in 1889. We've never had a case come up on it yet. Now, maybe we can change it and do better than they've done the last 80-some years, but I have some serious doubts. When I ran, I also told the constituents in my area that I was going to try to leave some of the things in that worked for about 80 or 90 years without causing any problems. So I support the majority to leave it in like it is.

**CHAIRMAN GRAYBILL:** Members of the body, you have before you for your consideration, on the recommendation of Mr. Noble that when this body does arise and report, after having had under consideration Section 7, as amended, we recommend it be adopted. All those in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move we stand in recess until 1:30 this day.

**CHAIRMAN GRAYBILL:** Let's make it about 1:40, since we're past the half hour. Is that all right? All right, the motion is to recess until 1:40. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed.
(No response)

(Convention recessed at 12:36 p.m.—reconvened at 1:45 p.m.)

**CHAIRMAN GRAYBILL:** The committee will come to order. Ladies and gentlemen of the committee, when we recessed at noon, we had just finished adopting Section 7 as amended. Therefore, will the clerk please read Section 8.

**CLERK SMITH:** "Section 8. School elections. The Legislative Assembly shall provide for elections of School District Trustees." Section 8, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Chairman, I move that when this committee arises, that they adopt Section 8.

**CHAIRMAN GRAYBILL:** Very well, the motion has been made that when this committee arises and reports, after having had under consideration Section 8, we adopt it. Mr. Martin, would you like us—Mr. Martin's not here.

Mr. Heliker, would you like us to read your amendment?

**DELEGATE HELIKER:** (Inaudible)

**CHAIRMAN GRAYBILL:** Will the clerk read Mr. Heliker's amendment to Section 8.

**CLERK SMITH:** "Mr. Chairman, I move to amend Section 8 of the Education and Public Lands Committee Proposal on page 5, line 24, after the word and punctuation 'elections': 'The supervision and control of schools in each school district shall be vested in a school board.' Signed: Heliker."

**DELEGATE HELIKER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker, do you mean to put a period after the word "elections"? Oh, you want to substitute that language in place of the language that's there, is that it?

**DELEGATE HELIKER:** No, I want to add it before the language that's there.

**CHAIRMAN GRAYBILL:** Add it before. All right. The purpose of Mr. Heliker's amendment is to add to Section 8, on line 24, page 5, right at the beginning of the section, the following sentence: "The supervision and control of schools in each school district shall be vested in a school board." Then it would go on and say, "The Legislative Assembly shall provide—" Mr. Heliker, are copies of your amendments on the desks?

**DELEGATE HELIKER:** No.

**CHAIRMAN GRAYBILL:** You might want to write that down then. "The supervision and control of schools in each school district shall be vested in a school board." Then the rest of the sentence—the rest of Section 8 would remain the same.

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, not being a member of the Education Committee, although I am vitally interested in the subjects considered by that committee for the same reason that all of us are, of course, plus the fact that I am myself a teacher, but not being a member of the committee, I have become aware of the problems that the committee has considered only as its report has approached the debate stage and as it has come on the floor and been debated. And I became aware—that is, acutely aware, although I was generally aware before, I suppose, if I thought about it much—that there is grounds for concern of—concerning the autonomy of the local control, the local school boards, as financing of the schools gravitates toward the state more and more and as we see in the future the increasing likelihood that it—there will be a continuation of that trend. And the fear has been expressed here on—in this committee, when we were discussing these matters previously, that the local school boards would lose autonomy as they lost their control over the funds, if they do. Now, this committee has not provided, I notice, for autonomy in the Constitution for local school boards, although that autonomy is provided in the statutes which make the local school boards bodies corporate. At the same time, however, the committee proposal in Section 11 provides for autonomy to a certain extent for the Board of Regents, which they propose to establish as a constitutional board. And I feel, therefore, that we should give constitutional recognition and status to the local boards to—first of all, to allay the fears which have been expressed, which I think are well founded, concerning the preservation of local autonomy; and secondly, to give parallel treatment to the governing boards of the public schools, as well as the public universities and colleges. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates. I also have felt that there is quite a bit of fear on the part of many delegates here, and no matter what we say, perhaps they'd still have that fear that the local school districts are going to lose some control and some power. And if you'll note in my remarks to the—when we get to 9, 10 and 11, you will note that we have even eliminated the word "control" in the new Public Board of Education, where it is in the old Constitution, and only use the word "supervise". By this amendment the intent is shown, I think, that this delegate—this body does want local control to remain with the local school districts, and I heartily support it.

**CHAIRMAN GRAYBILL:** Is there other discussion of Mr. Heliker's amendment?
Mr. Burkhardt.

**DELEGATE BURKHARDT:** I was off the floor. I wonder if you could repeat the amendment. Perhaps others have the same question.

**CHAIRMAN GRAYBILL:** Very well, the amendment is to add to Section 8, immediately after the title, a sentence as follows: "The supervision and control of schools in each school district shall be vested in a school board." Then the rest of it would be: "The Legislative Assembly shall provide for elections of school district trustees." It establishes a school board.

**DELEGATE BURKHARDT:** I would speak in favor of it and, as a member of the Education Committee, would heartily support it.

**CHAIRMAN GRAYBILL:** All right, is there any more discussion?
Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman, I just rise in hearty support of Mr. Heliker's amendment. I think that our local school boards certainly should have constitutional status.

**CHAIRMAN GRAYBILL:** Very well. The issue, then, is on Mr. Heliker's amendment, which would have the effect of adding to Section 8 a sentence saying: "The supervision and control of schools in each local school—in each school district shall be vested in a school board." So many as shall be in favor of his amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted.

Now, Mr. Martin, may we read your amendment?

**DELEGATE MARTIN:** (Inaudible)

**CHAIRMAN GRAYBILL:** Read Mr. Martin's amendment please.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 8, page 23, of the Education and Public Lands Committee Proposal Number 10 as follows: at line 23, page 23, by adding, following the word 'trustee' and before the period at the end of the sentence, the following words: 'which shall be separate from elections at which state and county officers are elected.' Signed: Martin."

**CHAIRMAN GRAYBILL:** Very well, Mr. Martin has proposed an amendment which would add to Section 8, after the word "trustees", language setting up the separateness of school board elections from state and county office elections.
Mr. Martin.

**DELEGATE MARTIN:** Mr. President, in our Executive Committee we gave consideration to the idea that perhaps the state elections, and particularly for Governor, should be in the off 2 years from the presidential election. The purpose of this amendment is to make certain that when we're discussing voting in school elections, that we have them separate and apart from other elections. I think that's—it needs no—I don't need to belabor the point, and I urge your adoption of the amendment.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman. In the Education Committee this was quite a discussed item. And one of the things that was brought up—and the reason we dropped or deleted the words from the old Constitution, saying it would be a nonpartisan election held separate from any city, county, or state election—was the fact that in many counties at this time, we find that you have two elections every other year, back to back, and sometimes these elections cost ten thousand, twelve thousand dollars. And it's felt that the taxpayer has to pay for these extra elections; and by putting in the Constitution the fact that these elections cannot be held on the same day as another election, this is costing the taxpayers a great deal of money, where this money could possibly be saved if these elections could be combined. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** One other point that I may add if I—and it's in the notes, but I just bring it out—and that is that in at least one instance, there is a partisan election of school trustees in the state, and I believe it is Butte—is that correct, Mr. Harrington?

**CHAIRMAN GRAYBILL:** Just a minute. Just a minute, now. Now, who did you ask?

**DELEGATE CHAMPOUX:** Mr. Chairman, may I direct a question to Mr. Harrington?

**CHAIRMAN GRAYBILL:** You may direct a question to Mr. Harrington. What is it?

**DELEGATE CHAMPOUX:** Is it correct that there is at least one—Butte—that has partisan elections?

**DELEGATE HARRINGTON:** Well, they have—they have parties that they call—it's supposed to be nonpartisan, I guess, but they have different parties—Independent United Party and Nonpartisan Party—and they vie against each other in election. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President. I support the idea of separate elections, but I don't think that we necessarily need it in the Constitution. I think that it could be done by the Legislature and probably would, in their wisdom.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. In the absence of Mrs. Payne from Missoula, I think that someone should speak on her behalf. She was a very strong advocate of leaving this flexible so the school district people and the local people had an option on these elections. She indicated—and I don't remember the figure for sure, whether it cost 10 or 20 thousand dollars to hold a school trustee—or a school election in Missoula County. And with the change that may take place where you no longer have a mill levy election at a local levy, and the time may come when you don't have that, then the argument that was presented saying, "Well, you have to have a mill levy election anyway, so you might as well elect the trustees". There was a lot of thinking that the trustees' election could be fixed by local option at some future date at a time other than in the spring when they're working on budgets—perhaps in the fall, when they'd have time to work their budgets out. But if no one else wants to carry the oar for Mrs. Payne, I am very happy to say that she was very concerned in this, and her argument was the one that persuaded us to change it.

**CHAIRMAN GRAYBILL:** Mr. Martin, do you want to close?

**DELEGATE MARTIN:** Perhaps we should have an amendment to the effect that it would exclude Silver Bow and Missoula. (Laughter)

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Martin's amendment to add to Section 8 language which would state "The assembly shall provide for elections for school district trustees which shall be separate from elections at which state and county officers are elected." In other words, separate school district elections would be required under this amendment. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Looks like it's wider than Butte and Missoula, Mr. Martin. All right, that's defeated. Are there other proposals for Section 8 as amended?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of this committee, you have before you for your consideration, upon the motion of Mr. Champoux that when this committee does arise and report, after having had under consideration Section 8 as amended, that the same be adopted. Now, you realize—some of you came in late—the amendment says: "The supervision and control of schools in each school district shall be vested in a school board. The Legislative Assembly shall provide for elections of school district trustees." So we added that one sentence to Section 8. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** Section 8 is adopted as amended. Will the clerk please read—well, just a moment. Now ladies and gentlemen, Section 9, 10 and 11 are associated, and I'm going to ask the clerk to read 9, 10 and 11 all at once. And the committee has asked that they then be given a time in which to explain the interrelationships of 9, 10 and 11, and the Chair has before it three proposed amendments to 9, 10 and 11 as a group and three proposed amendments to Section 11, if we ever get there, and we'll take them up in the order that they've been shown. But will the clerk now read Sections 9, 10 and 11 all together.

**CLERK HANSON:** Mr. Chairman. "Section 9. State Board of Education. The Board of Public Education and the Board of Regents of Higher Education, as hereafter designated, shall together constitute the State Board of Education, which shall meet periodically on matters of mutual concern. In case of a tie vote at such meeting, the Superintendent of Public Instruction may cast a vote." "Section 10. Board of Public Education. There shall be a Board of Public Education which shall exercise general supervision over the public school system and such other public educational institutions as assigned by law. Said board shall consist of seven members appointed by the Governor, with confirmation of the Senate, to 6-year overlapping terms. The Governor and State Superintendent of Public Instruction shall be ex officio, nonvoting members of the board. The duties of this board and the Superintendent of Public Instruction shall be prescribed by law." "Section 11. Board of Regents of Higher Education. There shall be a Board of Regents of Higher Education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the Montana University System and shall supervise and coordinate other public educational institutions which may be assigned by law. Said board shall consist of seven members appointed by the Governor to 6-year overlapping terms, subject to confirmation by the Senate, under regulations provided by law. The board shall appoint its Executive Officer and prescribe his term and duties. The Governor and Superintendent of Public Instruction shall be ex officio, nonvoting members of this board." Mr. Chairman, Sections 9, 10 and 11.

**CHAIRMAN GRAYBILL:** Very well. Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates. At this point I would like to spend some time going over what the two-board concept is, and in the process telling you about some of the ramifications in terms of what will happen, for instance. I also intend to define "body corporate" along the way. Oh—I move that when this committee does arise, that we adopt 9, 10 and 11. Is that proper at this time? No? Marshall just told me that.

**CHAIRMAN GRAYBILL:** That'll do in this classroom, Mr. Champoux. (Laughter)

**DELEGATE CHAMPOUX:** Well, here we go. Sit back, relax. If you look at the old Constitution, here's where part of the problem develops. If you look at the old Constitution—I'll read it for you, you don't have to look at it—it talks about, in Section 11—the general control and supervision of the State University and various other state educational institutions shall be vested in a State Board of Education. Now, that's all right up to that point, because it gives this board a certain amount of power. The problem comes, however, when you look in the next sentence, where it says, "whose powers and duties shall be prescribed and regulated by law." Now, what the problem here is: on the one hand they've made this board and given them powers, and on the other they've taken them away. Not only that, there is a question, or there has been until our Supreme Court—there was until the Supreme Court decision was made—whether this board actually was to control the lower public schools. Well, Sections 9, 10 and 11 of the proposed new article deal with the state administrative structure for education. Together, these sections provide a substantially revised framework for the operation of the educational system under the authority of Section 11 of the existing Constitution, which is a single Board of Education, which presently exercises supervision and control over the entire educational system, while sitting as the State Board of Education on matters concerning the public school system and ex officio in terms of Board of Regents on the University matters. Now, the proposed sections would replace this structure with the boards—with two boards which would separately supervise higher education on the one hand and the public school system on the other, but would meet jointly as the State Board of Education on matters of mutual concern. And incidentally, I want to stop right there and say that there was an editorial in the *Missoulian* 2 days ago that suggested perhaps that this board should present a unified budget to the state—the Legislature. Now, there's been a lot of fears expressed here that the two boards will tend to become competitive in terms of funds, insofar as the Legislature is concerned. Now, one of the things this committee wanted to do was tend to stop this ever-ending—never-ending parade of administrators coming to the Legislature, lobbying proliferation of courses. You know, one school gets a department, another school wants it; so the way they do, the way they get it is they come up and do their lobbying and what-have-you. We'd like to stop that. And I would suggest that perhaps someone might want to amend that board if we ever get to it—that "umbrella board", so to speak—that one State Board of Education—so that it does provide only one unified budget to the Legislature. Well, the proposed structure would provide a much-needed reform in the administration of education in Montana. The State Board of Education, as it presently exists, operates under a provision written at a time, 1889, when the educational system was fundamentally different from what it is today. The educational system of Montana in the 19th Century consisted only of primary grammar schools up to the eighth grade and a newly founded State University. Today it consists of a universal system of elementary and secondary schools and a public higher educational system composed of two major universities, four colleges, three community colleges, a number of vo-tech centers—five of them in all—and, plus, they have another vo-tech area at Bozeman. In 1889 there were less than 12,000 students in this system; in 1970 there were more than 200,000 students enrolled. At the time of statehood, the office of the Superintendent of Public Instruction consisted of one person and a clerk. The function of the office was mainly information-gathering. At present the office has a staff of a hundred and sixty-two and administers more than $52 million for a vast array of state educational programs. The provision for a board which was appropriate to the 1889 section—situation—is clearly not appropriate today. At least the committee doesn't think so. It was not even clear that the State Board of Education was ever intended to serve as the board for the entire educational system. The phrase—and I quote—"and the various other state educational institutions", in the existing Section 11, appears to refer only to what are commonly thought to be state-run institutions; that is to say, not local schools—in other words, the state normal schools, school for the deaf, blind, and so forth. It was only by virtue of a Montana Supreme Court interpretation in the State versus Cooney case in 1936 that this section was specifically ruled to apply to the elementary and secondary school system. In practice, the State Board of Education has devoted the great majority of its time to matters of higher education—now, one board member told us 90 percent; another board member disputed that and said 80 percent. There's a 1968 legislative study that says 85 percent—so take what you want to. At least it's the overwhelming amount of the time that's spent on higher education. There is a kind of informal division of labor between the board and the State Superintendent, such that the lower schools are looked after by the Superintendent of Public Instruction and that the board sees its duties primarily in the field of higher education. A recent study that was concluded in 1958, the Durham Report, says: "The result is that the board's functions"—and I'm quoting—"in public education become more of the nature of trouble-shooting and too little of consistent long-range planning, policy formulation, appraisal", and the like. One major reason, therefore, for the creation of a two-board structure is the establishment of a board that will be specifically qualified for and concerned with the problems of elementary and secondary education and other institutions which may be assigned by law. The correlate of this structure is the establishment of a separate board for higher education which will be similarly qualified for and attuned to the particular problems of higher education. The necessary coordination between these two separate boards would occur in the joint board provided for in Section 9. This joint board, the State Board of Education, would meet periodically to act on matters of mutual concern to both sectors of education. Now, we did talk about this matter of "periodically", and we thought perhaps it would be better to leave it loose, rather than say, you know, they're going to meet 5 times, 10 times a year, what-have-you. There has been some criticism about that. Also, there's been some criticism to the extent that it doesn't provide for a Chairman of this board. I would assume—I don't know, we never really discussed this as to what the committee feels who the Chairman should be—but I would assume that perhaps it would be the Governor. However, the other two boards would elect their own Chairman—why couldn't this board? Further reasons for the reorganization of the boards of education are presented in the next section. I want you to notice, in this Number 9, if you look at the old section of the Constitution, it talks about supervision and control. In this section we have left out the word "control". Again, we want to emphasize that we want the local public school boards to have as much power as possible. Also, we want you to notice that it talks about "and other similar"—let's see, the phrasing is exactly—well, we'll go on. All right, let's go to the new public board, or the Board of Public Education, Section 10. The membership is prescribed, and its responsibilities are prescribed also. As described in the preceding comments, the greatly expanded activities, personnel, and funding involved in elementary and secondary education requires that this crucial sector of education have its own administrative board. The largest share of state funds for any one purpose goes to elementary and secondary education. The state administers over 25 major federal programs in education at this level. The kinds of education needed and offered are constantly changing and expanding. A board which is to cope adequately with this vast area of responsibilities must consist of members who are qualified and who have sufficient time to become knowledgeable about the particular problems and issues of public education. A board is no more capable than is a Superintendent of being competent to administer two fundamentally different areas of education. Now, another problem that's arising here, and I'm sure that if you've been reading the papers and you look at the Serrano thing and so forth, it's very, very obvious that we're going to get more federal funding. Now, there have been two studies on this. The commission—the presidential commission that was issued—the report that was issued last Monday said that we're going to get, at a minimum, 21 percent of federal funding—21 percent. Now, another intergovernmental commission that issued a report in January, a presidential commission, said that these grants will be conditional on matching or more funds. Now, if that's true—now, presently we're getting 70—7 percent federal funding. If we're going to have 21 percent federal funding, that means, then, that the state government is going to be putting in 21 percent; that gives you 42 percent. Presently the state government is putting in 27 percent. You're talking about 69 percent state and federal funding—69 percent. Now, it is my estimation from all that I know, and I'm sure that some of the members of the Revenue and Finance Committee will agree with this, since they have studied extensively, that that figure is going to be an absolute minimum. It is probably way too low. What I'm saying here, then, is that we're talking probably about anywhere from 80 to 85 percent federal and state funding that's coming, and we might as well face it. Now, with all of that money flowing through the state, don't you think we need another board to be looking at it—a board of lay people watching over this, having a check on the State Superintendent's office, and so forth? The need for a separate board for public education promises, then, to become even greater in the future. The present trends indicate the assumption of much greater role in educational financing by state and federal, possibly as much as 90 percent—and I don't want to go into that, because this is according to Serrano, and there's a variance factor there that—constitutional lawyers say there's somewhere between 10 and 12 percent, but we don't know. Well, a well-informed and representative board would provide a much-needed balance to decisions on administrative policies, and that is one of the things I want to emphasize. In this whole business of the boards, we have to keep in mind all the time that the Legislature is not going to be here in session all the time, that the representatives of the people are not going to be here administering this. And the greatest fear is the bureaucracy; the greatest fear is the bureaucracy. A large majority of witnesses who testified on the subject, including key state officials and many educators, spoke in favor of the two-board concept. As a matter of fact, every major person involved in education, like the State Superintendent of Public Instruction, the Presidents of all the University Systems, community—the university units—the community college presidents, the Montana Education Association, the largest education association in the state, and many, many other groups totally support this two-board concept. Three major studies that have been made since 1958—the Durham Report, the Peabody Report, and the Legislative Council study of 1958—all of them support the two-board concept. Not only that, at one time we had a constitutional amendment brought out—I believe it was in 1960; three of them were brought out—they were never put on the ballot, because they weren't signed by the Governor. It had nothing to do with the two-board concept. The longest-serving member of the State Board of Education, Maury Richards—many of you know him—sent us a letter, and I quote: "Please give every consideration to a two-board system. Frankly, even the most capable, dedicated board member finds it impossible to do justice to the total assignment." Numerous studies have shown that we need this. The fear has been expressed that a separate board for public education might usurp the powers of local boards. There is no reason to be concerned about such a policy—possibility—however, since the powers granted the state board would be almost identical to those now granted, and what we have just done is to guarantee the control by the local board at the local level. Indeed, the committee has actually deleted the word "control" from the powers and granted—now granted the board, so that the new section reads: "exercise general supervision over the public school system." It would be difficult to argue that this grants any additional powers to the state board at the expense of local school boards. Under existing law, vocational—let me bring up this question about where's the vocational-technical schools going to go. This has caused a lot of concern. I want to make sure, at this time, for the record, the feeling of the committee and cite a number of other things. First of all, the committee wants it categorically stated that their feeling is that they want the vo-tech schools to remain under the secondary-primary board. Now, we have consulted with constitutional lawyers on this. They say that the statutes would not change unless the Legislature decided this. See? Now, why haven't we stated that the vo-tech centers will remain under the secondary—or the primary board? Well, very simply because the vo-tech representatives that came to us and said—and I'm quoting directly from the transcript of the meeting—Mr. Driscoll and—Maurice Driscoll, a fellow delegate and Bill Korizek, representing the vo-tech centers, said that they "wanted no mention of specific units in the Constitution". No mention of them. And we agreed with that, because we felt it would be too restrictive and would set these units in concrete. Not only that, they stated—and I quote—they "favored one single board of education". I notice that Mr. Driscoll has brought up an amendment. He's going to be advocating that; and Mr. Gysler also has some connection with the vo-tech—is also advocating that. But notice this, and I quote from their own testimony—they "favor one single board of education with three subdivisions". Three subdivisions. Now, why are we concerned a little bit about this? You notice the same wording is used over in the new Board for Higher Regents, with one little variation that I will explain to you when we get to it. Now, why have we done this? Well, if you go back to 1889, who ever heard of vo-tech centers in 1889? Who ever heard of community colleges in 1889? What are these schools going to be called in 1999? What kind of schools are we going to have in 1999? What we've done this for, then, is to provide some flexibility so there can be movement back and forth. Not only that, I want you to note that only 61 percent of the vo-tech education is in the vo-tech centers; 39 percent of it is in either the community colleges or at Havre—at Northern at Havre. These figures come from the Department of Public Instruction, and also Mr. Ball's office in the Vocational office. Well, what we are trying to do, then, is to provide flexibility. From what we have found out, the greatest emphasis perhaps in the next 20 years is going to be on vo-tech education, or what would be called practical education. After all, isn't a teacher a vocation, too? And it's estimated, within 10 years, perhaps 50 percent of all education will be of this nature. This is why we have attempted to provide some leeway, some flexibility, where these units could move back and forth. Within 10 years, 50 percent, perhaps, of all education will be of this type, and it will be involved not only at the kindergarten level but all the way up through and including the university level. All right, the voting members of the board would consist of seven members selected by the Governor for 6-year overlapping terms. The Governor and Superintendent retain ex officio membership on the board, but in a nonvoting capacity. Now, the reason why we did that, we heard from many people voting—board members also—that sometimes these people come in—they come in with their proposals, you see; especially the State Superintendent of Public Instruction. Here's her proposal to the board, and then she votes on it. And we thought that that perhaps wasn't right, so this is why we put that in there. We feel that the elected officials should be separate from the board decisionmaking but should retain membership on the board for informational and coordinating purposes. The committee feels that the duties of the Superintendent should be legislatively prescribed to allow for changing conditions and possible alterations of the relationship between the board and the Superintendent. It is fully expected by the committee that the office of Superintendent shall be provided by election, and it has been. A majority of the committee feels strongly that the Superintendent should be elected—well, I don't have to go into that. All right, let's go to the last board, this Board of Regents of Higher Education. The second fundamental component of the proposed new administrative structure for education is a Board of Regents of Higher Education. The same reasons which apply to the need for specialization and concentration on the public school board hold also for the Board of Regents. Higher education is fundamentally different from public school education in goals, curriculum, financing, control, operation, and so forth; and it must be administered accordingly. There is very little in common between the public school system and higher education, other than a shared need to provide a smooth transition for students between the two systems. Now, I have a kind of a suspicion that some of you are interested in what this word "a body corporate" means, so at this point I want to stop and define "a body corporate" and tell you a little bit about it. And at the end of this—my little lecture here today, I'm going to tell you what we see as happening if this occurs and what we see as not happening if it occurs. All right, let's look at the definition of a "body corporate"—this is from *Black's Law Dictionary*—one, it provides legal recognition as an entity apart from a normal administrative or executive agency. It limits liability of directors or members; and that point was brought up by some board members in terms that they can be sued without this. Under this the board can, but not members. It recognizes the perpetuation of the body between individual membership. It generally grants right to purchase or sell property, hold title to property, sue, contract, adopt a seal, and so forth. It generally grants right to the body to govern its own internal operations, and that should be emphasized. That is what the keys to all of this is about, the power to govern its own internal operations, according to articles of charter or incorporation—in other words, the grant of power. It has this power to exercise all powers necessary or convenient to effect any or all of the purposes which the organization is—corporation is organized, to sell things, and what-have-you. Now, the following states have a body corporate: Alaska, California, Colorado, Georgia, Hawaii, Idaho, Louisiana, Michigan, Minnesota, New York and Florida. A body corporate is also a term applied to corporations, public and private, and is a term particularly applied to a public corporation having powers especially assigned. It indicates the distinguishing characteristics of a corporation—and what are the distinguishing characteristics? Is an artificial person a legal entity, capable of acting through its corporate offices and agents; of suing, being sued; of taking, holding property; of contracting its own name; and of continuing to exist independently of the individuals who compose it? All right. A public corporation is one created by the state for political purposes and to act as an agency in the administration of civil powers delegated to it, generally within a particular territory—a subdivision of the state—and usually invested for that purpose with subordinate and local powers, and so forth. Now, all school districts in the State of Montana, by statute, are body corporates. All school districts in the State of Montana, by statute, are body corporates. If you look at the *Revised Codes*, 75-6501, it says "any district shall be a body corporate." Every community college in the State of Montana —community college district —is a body corporate. If you look at the *Revised Codes*, 75-8102, these are by statutes; however, all vo-tech schools—centers which are administered by local school districts come under the powers of a body corporate. The University System is the only educational unit in the state that is not a body corporate. Now, what does it mean, really? It means that you are master of your own house; that you can set your own curriculum; that you can hire and fire. And I'll go into detail later on as to what the limitations on this power are. We've been using the term "autonomy" around here. I think we've been using it rather loosely, because autonomy means freedom, complete independence; and this isn't necessary to the case, as we shall point out, with this board. All right. A recognition, then, of the particular needs and problems of higher education has led all but two states in the Union—all but two—to establish separate state governing boards for higher education. Now, they've either established it by constitutional status or by legislative status. Montana and Idaho remain the only two states which retain a single board for both public schools and the University System. Some states have more than two boards for their educational system; some have three and four. But the generally recognized principle is that different educational tasks require different administrative structures. As noted in the comments to the previous sections, major studies of education in Montana recommended the creation of two separate boards—the Durham Report, 1958, and so forth. In addition to administrative questions, another fundamental reason exists for the establishment of a separate Board of Regents of Higher Education. Higher education is not simply another state service. The administrative structure of higher education cannot be considered an ordinary state agency. The unique character of the college and university stands apart from the business and usual of the state. Higher learning and research is a sensitive area which requires a particular kind of protection not matched in other administrative functions of the state. Few would dispute the vital importance of academic freedom to the process of higher learning. Such freedom is the essence of the American higher educational system. The great movements of mankind have come out of the great modern schools, the modern university system, ever since the time of the Renaissance. And the greatest of these movements have come out of the schools that were unfettered by controls that would tend to stifle them. Only in an atmosphere of independent, then, and unfettered inquiry can an objective pursuit of knowledge be conducted which is unhindered by prejudice and vested interest. The great contributions to both scientific and humanistic learning which have emerged from American colleges and universities can be attributed in large part to the freedom traditionally enjoyed by the teachers and students in such institutions. This was the idea implicit in the founding of both private and public colleges and universities in the United States. And here I want to stop for a minute and say something—that originally—(Laughter) You're awake. How about that?

**CHAIRMAN GRAYBILL:** You're entitled to one mistake, Mr. Champoux. Go ahead. (Laughter)

**DELEGATE CHAMPOUX:** I'm sure going to make more of you when I get through—saying something about that. (Laughter) Oh, we needed a pause. In the beginning these schools were established independently. If you go back in the Renaissance—only in modern times have we found this tendency for more state and bureaucratic control. And it's getting worse and worse, as I will show you, all the time. The society as a whole accepts the principle unreservedly. This was the idea implicit in the founding of both private and public colleges and universities in the United States, and it is an idea which still prevails. The society as a whole accepts the principle unreservedly. Rarely does a direct attack come upon the concept of free inquiry. However, a more subtle kind of coercion has made its appearance, and it is of the sort which is likely to become an ever—even greater threat to the integrity of higher education in the future; and this is the growing power of the centralized bureaucratic state. Without overtly intending to curtail freedoms, the modern state has absorbed an increasing amount of power and control in the name of efficiency. A pervasive form of influence and manipulation has grown hand-in-hand with the emerging predominance of the government form and the computer. What do I mean by that? Laws are made by Legislators, but the bureaucrats administer them, and that's the problem. We hear all the time about the unresponsive government, the unresponsive government, and so many times we think of it as being the Governor, the Attorney General, the Legislators, and so forth. The greatest danger in this country is not from our elected officials, but the ones that are hired to administer the laws. I'll never forget the day, 2 years ago, in a speech Senator Metcalf said, in Kalispell, that he had been in the Congress for I don't know how many years, and all of a sudden he heard about an agency down in the cellar of some building there that had fought at something he wanted to do. He looked into this, and he found out about an agency that had been never authorized by anyone, anywhere, and here it was administering programs. Not only that, Senator Goldwater—boy, I've hit both sides of the fence there, haven't I—over in Spokane made the same claim—I've got the right and left in on it now—that the greatest danger is from this bureaucratic control. A warning of this social trend was voiced in a landmark study of the condition of the American university conducted in the late 1950's under the chairmanship of Dr. Milton Eisenhower under a Ford Foundation grant—now I've got good old Ike on my side. The study described a variety of creeping controls on university systems which have appeared in recent years across the country. It warns that strict adherence by institutions of higher learning to a bewildering array of centralized bureaucratic controls will ultimately endanger the academic as well as the administrative freedom of the colleges in this country. This is from a book by—it's in a book called *The Campus and the State* by Malcolm Moos and Francis Bourke. Among the sources of growing controls which increasingly impinge on universities are state budget offices, state auditors, comptrollers, purchasing departments, personnel offices, central building agencies, and a variety of older forms of controls, such as legislative riders, which are being used in new ways to affect colleges and universities. The informal controls associated with these direct means often exert an even stronger influence on the educational process. The study concludes that the maintenance of the system of higher education free from unnecessary bureaucratic and political interference is important not only to a healthy academic atmosphere, but also to the administrative efficiency of the system of higher education. "Creative research"—and I quote—"by its very nature requires freedom to move in a different direction if the facts uncovered require it. The further away budget authority lies and the more time-consuming it is to get permission for such changes, the less will be accomplished. Research and instruction at the higher levels are not services for which specifications can be written in advance, and for which one seeks the lowest bidder. They are venture capital investments, where one successful strike in a multitude, either in the form of a new ideal or a trained individual capable of producing them, may spell the difference between a forward-moving or a retrograding nation. The power to coordinate and operate the system of higher education is one which belongs primarily, properly, to an informed Board of Regents who have the knowledge and ability to determine rationally the course of higher education. Master plans have been suggested for the guidance of higher education in Montana but have failed to be applied because of a lack of power." We could have a master plan in this state where all of the higher education units would be coordinated—all of them—so we wouldn't have this duplication of courses, this duplication of programs, and also the duplication of our units, if we only had power in a board that could enforce its own mandates in terms of its internal controls. And that is going to be one of the greatest benefits—and I want to put that on the record as the intent of this committee—that this unit would tend to put the house of our higher education in proper order. A Board of Regents empowered to carry out its informed judgments would be an important force for efficiency in the higher educational system. It is this factor of efficiency which is highlighted in the study chaired by Dr. Eisenhower. The primary conclusion of the study is that freedom actually enhances efficient operation of a university system. You might say, you know, "Why, we'll give them freedom, and they're going to go off and do their own thing." They're going to be very aware of public opinion, and once they can put their own house in order—they've got the control to do it—they will. The fact that higher education very largely owes its autonomous position in state government to the belief that freedom promotes rather than limits efficiency. In the future there is one point that colleges and universities will need to make to the public and its elected representatives very persuasively; this is simply that the goal of efficiency in higher education can be realized without noneducational officials intervening in the fiscal affairs of colleges and universities. The factors in particular add to the efficiency of a university—two factors—which is relatively free to control its own affairs—one, long-range planning. We've seen a lot of instant expert work in this very floor here—all the time. What would you feel like if you were a Professor that had planned something a long time and had come up, tried to get it passed in the Legislature, completely fail; and then some guy in the back row got up and decided, "Well, this is a brilliant idea", and passed it. And you'd have to administrate it, oftentimes without money to finance it. In the future there is one point that colleges and universities will need—well, long-range planning and administrative decentralization. There is a clear need for a strong Board of Regents to make long-range plans which are appropriate to the needs of higher education and free from short-term political whims. The limits of decentralization—centralization in government—oftentimes operations have become apparent, particularly in such an unpredictable and flexible field as higher education. A Board of Regents which is given the power to control and manage its own affairs would enormously improve the planning situation for higher education in Montana. Well, I want to get to something here now. Last Thursday, on the floor of this assembly, was distributed a letter to certain delegates from the Office of the Department of Administration. I heard about it. I finally acquired a copy, and I want to read you that letter. It says: "The Department of Administration is in favor of safeguarding the academic freedom of the University System in the Constitution. However, the proposed change goes far beyond the question of academic freedom. It gives the University System complete autonomy in the areas of finance and administration as well, without any control being exercised by the Legislature or central government. Past experience indicates the Board of Regents has not exercised its authority over the budget process." The attached newspaper clipping shows the board put its—quote—"rubber stamp" on the 1971-73 biennium education budget. Now, look at this—*Great Falls Tribune*, 2 years ago. They really had to search through the clipping file to get that baby, didn't they? Not only that, the headline doesn't coincide with what's said in the article; and we've had experience with headlines in this assembly, haven't we? Well, the general fund appropriations—it goes on, such-and-such—it names them—then it says, "The state is now in the process of developing a uniform statewide budgeting and accounting system. If the University System is excluded from the state's financial and administrative rules and regulations, it will be impossible to adequately report on the state's financial operations. The taxpayers are entitled to know where and how their whole tax dollars are being used, and not just part of their tax dollars. Full disclosure in reporting is fundamental to achieve full accountability. If the University System is given full autonomy from financial and administrative controls, this means they will be"—and then he has about ten exemptions—ten exemptions—and I want to look at some of these exemptions, and then I'm going to give you my answers. He says, first of all—incidentally, this letter was unsigned. We sent a member of my staff down to the administration office, and we asked if this had come from the office. They denied it. They said no, they would never get involved in convention affairs in this manner. When we informed them that we had subpoena power, it was a different story and it was found out that Mr. Saxby, the State Comptroller, wrote this letter—a bureaucrat. Number one—says here—his letter—"they will be exempt from using the state treasury system." It's a nice interesting charge, but it's not true. All moneys appropriated by the Legislature would still be directed through the state treasury system. States with similar provisions as we're proposing employ the same—the state treasuries for such financial operations. Incidentally, we called five different states with this kind of a setup, and this is the information they gave us. Number two: Mr. Saxby says that they would be exempt from legislative audit of their operations. Absolutely untrue. The Legislative Auditor works for the Legislature and will continue to audit units of the University System as he saw fit. Legislative Auditors are continuously at work inspecting the operations of the universities in those states with similar provisions. Number three: exemption from an external preaudit of their claims. Partially untrue. The claims of the University System could be preaudited, although this would not automatically entitle a preauditor to absolute veto power over the University System claims. Preauditing continues on a full basis in states with other similar provisions. Number four: they would be exempt from investing their funds—funds for the Board of Investments. Now, that's an interesting charge in that it seems to indicate that Mr. Saxby didn't even read the financial—the educational report, nor even read the stipulation. Because in Number 12 that we'll be taking up here, I hope, this afternoon, it says university funds shall be—quote: "respectively invested under such regulations as may be prescribed by law", and certainly that would be through the Department of Investments. Number five: exempt from having their construction programs reviewed by the State Architect. This is questionable. Some states which have similar provisions still have the State Architect review building programs. However, the advisability of such a review, even if continued, is debatable. The new science building at the University of Montana, which has severe architectural defects, was reviewed by the State Architect. Six: They would be exempt from having their warrants issued by the State Auditor. Untrue. The state warrant process is the only method that state—that funds can be spent from the state treasury. Moreover, there is no reason why the Board of Regents would want to quibble with this process. They would be exempt from executive review of their budget adjustments. Untrue. The Department of Administration could still review budget adjustments. The department would not have absolute veto power, but it could most certainly voice objections to the Governor and the Board of Regents. States with similar provisions have exhaustive full-time executive reviews of university budgets. They would be exempt from executive review of their fee schedules and fee waivers. The Board of Regents currently has the statutory power to levy fees, not the Executive branch. The next one is a very interesting one: it says they would be exempt from the statewide budgeting and accounting system. It's interesting because it is a system not even in existence. Apparently the department plans to implement such a program and fears the University System might be excluded. The University System would not be exempt from this accounting system, as it would relate to state treasury funds. The University System's right to design and maintain its own internal accounting system is appropriate to its own activities, as it has traditionally been done, to provide proper management information as it has in the past. Then it goes on and on. Central Purchasing—it would be exempt from it. They wouldn't be exempt from Central Purchasing. If they felt that they wanted to—you know, it would be better and advantageous to them—but we're going to show you some examples here in a minute where it hasn't been advantageous to them, and so forth. Next, he makes the charge that—he's a former employee of Governor Reagan of California, incidentally. He makes the charge—he links the campus disturbances at Berkeley to the constitutional status of Board of Regents. This sort of innuendo is disgraceful. Anyone who has any knowledge of higher education knows that the situation at Berkeley had nothing to do with the powers of the Board of Regents; and more violent confrontations occurred at San Francisco State, the governing Board of which has no constitutional protection whatsoever. On the other hand, why haven't there been no riots at the University of Georgia, Michigan, Minnesota, Colorado, and so forth, that have corporate status? The real intent of the Department of Administration appears to be revealed in the last paragraph of their letter. The department wants power, bureaucratic power, and they're afraid that they might not be able to increase it if this Board of Regents goes into effect. Let's look at some examples of what's happened. Here's the Music Department at Missoula. Whenever they order something they have to come up here and put up their orders for bid, and such things as pianos and other instruments. Here are experts in the field down in Missoula and they come up here; they ask for a certain instrument, but it's overruled by an accountant. Why? They have to buy on the lowest bid basis. Oftentimes this lowest bid basis is an out-of-state bid. Sometimes it's only a few dollars cheaper than the local dealer, and they can't get service to be—service cannot be obtained locally. You can't buy secondhand equipment because of a state regulation, even from Helena, the city of Helena. Now, the problem comes when you've got 8-year-old Sears and Roebuck pianos. You ought to listen to some of those students and their piano playing. The State Department of Administration has been attempting for 2 years to impose an accounting system on the University System which is simply not appropriate to educational institutions. The University System has, in fact, been using a far more modern, double entry accounting system than the state has used for years, the same system that's recommended by the American Council of Education and used nationally in all major universities for educational accounting. The University submits the most detailed and well-prepared financial reports in the state, double entry, twice a year. The obvious solution to this problem is simply to write a computer program that goes along with the University System and include it in the state system. I wonder if they've thought of that yet? The State Administration Department has expressed desire to incorporate other University-connected funds into the state General Fund, such as dormitories, fraternities, sororities, and so forth. These funds are self-sustaining and self-liquidating. It would be silly to bring them all the way up here, when they're going to have to be turned over so many times at Missoula, Bozeman, and so forth. Research grants by the government—they want to administer them all through the State Senate. But one of the better ones is the Motor Pool. This has been a fiasco from the start. The University was paying 8 cents per mile previously; now it pays 8.6 percent. Well, that may be inflation. Even after handing over approximately a hundred and fifty cars to the state, enormous inconvenience and extra cost in time is wasted going to and from the depots; adding mileage and time to the cost of going out of the way is probably greater than the savings. It takes 7 months to get billing. Not only that, anyone who uses a car permanently assigned to him must send in daily—daily—a report on its use. The man at the Agricultural Experiment Station has to drive 18 miles each way, each day, to get gas for his car. The state is in the process of getting into the gas station business—competing with private industry. All of this resulted from the bright idea of a bureaucrat that the car pool in Helena should be made statewide. Look at investment. In its review of the University investment policies, the Legislative Audit Committee complimented the University System on its fine record and said it should continue until the state could do as well. The state is making 3 percent on its investments; the University is making 6 percent.

**CHAIRMAN GRAYBILL:** Mr. Champoux, I wonder if you could conclude as quickly as possible.

**DELEGATE CHAMPOUX:** I'm going to, right now.

**CHAIRMAN GRAYBILL:** I think you've had plenty of time.

**DELEGATE CHAMPOUX:** Here it is. Okay. If you look at also some other problems; a tax on people, individuals, in the system—some of you remember Dr. Morton Borden here a few years ago because of a speech he made out in Minnesota, I guess it was, on cooperatives and the economic system, before the Farmers Union. He was severely attacked on this floor. They tried to eliminate his salary from the budget. As a result, Borden is now teaching, Head of the Graduate Program at the University of Santa Barbara. Dr. Louis Levine made extensive studies of mine taxation, and because of their controversial nature with respect to powerful mining interests, the Chancellor, under pressure from the Legislature and a threat to cut appropriations, suspended Dr. Levine. He resigned and went to New York. Well, if a board is created for higher education and given the responsibility for education but not the authority to carry out such responsibility, how can they be held accountable to the people? If the real authority for carrying out the policies of higher education is dispersed among the bureaucratic political frameworks of other agencies, who then is accountable to the public? A healthy post-secondary educational system must have freedom from political changes of fortune, while still maintaining its responsibility and accountability to the state. The institutions themselves, the centers of teaching and learning, must be immune from external political or ideological pressures. Thank you very much for the time I've spent.

**CHAIRMAN GRAYBILL:** Very well, the issue under consideration is Sections 9, 10 and 11.

Mr. Rygg, you have an amendment. Do you want us to read it?

**DELEGATE RYGG:** Yes, would you read it, please.

**CHAIRMAN GRAYBILL:** Will the clerk read Mr. Rygg's amendment to Section 9.

**CLERK HANSON:** "Mr. Chairman. I move to amend by deleting in their entirety Sections 9, 10 and 11 on pages 24, 25, 27 and 31 of the Education and Public Lands Committee Proposal Number 10, and by substituting in lieu thereof the following section—quote: 'Section 10. The general control and supervision of the State University and the various other state educational institutions shall be vested in a Commissioner of Education, whose powers and duties shall be prescribed and regulated by law.' Signed: Rygg." Mr. Chairman.

**DELEGATE RYGG:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Rygg has proposed an amendment to eliminate Sections 9, 10 and 11 and put in place thereof a Section 9 which would set up a Commissioner of Education. Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman—

**CHAIRMAN GRAYBILL:** I wish everyone that's not debating would sit down and get off the floor.

**DELEGATE RYGG:** Mr. Chairman—

**CHAIRMAN GRAYBILL:** Very well, Mr. Rygg.

**DELEGATE RYGG:** This, I suppose, could be called a Kelleher amendment; that is to say, I'm sure it has no chance of passing—and my apologies to Bob, because he isn't here right now. But during the early days of the Convention, I approached several delegates with this idea, and each one said it wouldn't work. They said we'd tried the chancellor system once and it failed. Because of this, I did not prepare a delegate proposal, nor did I present my idea to the committee. And therefore, probably asking you folks to waste a few minutes of your time, but I'll try to make it up by not talking much the next few days. I do feel compelled to throw out this idea, though, as I believe it actually would solve Montana's problem of administering this school system. The only way we are ever going to get efficiency in our school system, especially in our higher education, is to have one man accountable. What I have observed, over the last 12 years, the University Presidents influence the Board of Regents, and that's understandably so because the layman bows to the professional. And the Presidents also, in my opinion, influence the Executive Director, even though I think he is supposedly answerable to the Board of Regents; and as a result, all six of the Presidents tries to build his own little empire, and that you can't blame them for. Now, a one-man rule could stop this empire-building and make the decisions as to what each institution should be offering as far as courses are concerned. This is especially true in the graduate field, but could apply in the other areas. Under the Commissioner of Education there should be one University President, and under this University President there should be six Vice Presidents and six Deans; and the Vice Presidents should be more businessmen than educators and the Deans, of course, should have charge of the academic field. Under this same Commissioner—in all, there should be three departments. The President of the University should be one; the second should be the Superintendent of Public Instruction, who should be in charge of the elementary and secondary schools, which is the case now; and the third department head is also needed, and that's one to be in charge of vo-tech and community colleges, so there are—because there are really three departments. I am convinced that a system like this, or one similar to it, is the only way out of Montana's present dilemma, especially in the field of higher education. Now, out of deference to Chairman Champoux who, of course, is my colleague from Flathead County, and in the interest of saving time, I hereby withdraw my motion. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, I understand Mr. Rygg to have made the following motion: "The general control and supervision of the State University and the various other state educational institutions shall be vested in a Commissioner of Education, whose powers and duties shall be prescribed and regulated by law." And I understand that he has now withdrawn that motion. Mr. Gysler.

**DELEGATE GYSLER:** I have an amendment, Mr. Chairman. I wish the clerk to read it.

**CHAIRMAN GRAYBILL:** Well, we'll read your amendment—Mr. Clerk, will you read Mr. Gysler's amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend by deleting in their entirety Sections 9, 10 and 11 on pages 24, 25, 27 and 31 of the Education and Public Lands Committee Proposal Number 10 and by substituting in lieu thereof the following section: 'Section 9. The general control and supervision of the State University and various other state educational institutions shall be vested in a State Board of Education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of 14 members, the Governor and Attorney General being members ex officio; the other 12 members thereof shall be appointed by the Governor, subject to the confirmation of the Senate, as provided by law. The State Superintendent of Public Instruction shall be the executive officer of the board, shall perform such duties as the board shall prescribe in addition to such other duties as are provided by law, and shall receive such salary as is provided by law.' Signed: Gysler." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Gysler has proposed an amendment which takes out Sections 9, 10 and 11 and substitutes a single State Board of Education.

Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. I rise with a little hesitancy, being a Norwegian born in the northeast corner of Montana and getting up against a Frenchman from Boston, especially after the very eloquent hour-and-some-minute speech he made. First, I want to say that probably I have a real interest in this—I don't know if you would call vested or not—but I have three sons who are in the educational system of the State of Montana. I've been active at home in vocational education, but to those of you who think that I'm all things, I'm a real conservative. Things have been going on in the Fort Benton school system; and if you picked up today's *Great Falls Tribune*, you will see two pictures on the front page of what was happening yesterday in the Fort Benton school system; and if you will turn to page 12, you will find the writeup on what happened there. I was also one who taught school at a very unusual deal last October, when all of the teachers went to an in-training service session at the school. I confess that I have been more active in the line of vocational education than I have been higher education, and this is for a couple of reasons. But primarily the number one reason is because I feel the great inequity that we have had over the years between higher education and vocational education, and I have been working to help to try to correct that. As an invited participant to the Secretary of Health, Education and Welfare's regional meeting in Denver last April—I believe it was Region 8 they called it—six states—and by the way, I paid my own expenses. Dr. Rump from the Department of Education in Washington, D.C., told us that by 1980 only 20 percent of the jobs available in our country would require a college education, so that this leaves 80 percent that do not require a college education. A couple of mornings ago while I was getting dressed, I heard on the radio that by—some national commentator, I forget who he is—comes on roughly 7:15—that just a few years ago, 15 percent of the jobs in this country required no education, or at least none beyond high school. In 2 or 3 years, that number will drop to 5 percent. So with this little bit of background, first I would like to explain what I've attempted to do with the article I've introduced. As with the majority proposal, the general supervision and so on—we say control, too—but just generally is vested in this board—the Board of Education, whose duties shall be prescribed and regulated by law.

(Delegate Eskildsen assumes chairmanship of Committee of the Whole)

**DELEGATE GYSLER:** I propose this to be one board and, as you will note, it's a total of 14 members, 12 of who are appointed by the Governor according to law so that there is enough people on it to subdivide and—if they so desire—and spend the time in separate areas as you do on a board of directors of most any large corporation. But this is one board. I was very happy to hear the Chairman of the Education Committee admit that there should only be one board when you come around to the dollars and cents aspects, and I submit to you that there's a lot more to education and a lot more coordinating needs to be done besides on the dollars and cents aspects. The Governor and the Attorney General are ex officio members, but I hope that I've got this so they're voting members. Now, I've taken the State Superintendent off from being a voting member because, really, I don't feel someone who is being the chief administrator should also be on the jury end of what the administration—of how the functions are being carried out. I also—and this will probably draw some fire—I say that the State Superintendent of Public Instruction shall be the executive officer of the board and shall perform such duties as the board shall prescribe, in addition to duties by law and so on. Now, this has drawn some fire, but really what I'm attempting to do here is to make one system of education in the State of Montana. It is very important that all levels of education be integrated, and by doing this, this is the intent of this article. Now, when I say the State Superintendent shall have such duties as prescribed by law, this was the only way to—that I could see, anyway, to be sure that the State Superintendent was elevated on up to the top of the whole works. Now, maybe we're going to have to take another look and just not elect a Superintendent of Schools that's good for primary and secondary education. But if we're going to have one board and one system of education in the State of Montana, this really is what we have to end up doing. Now, the duties in that part—the duties that I am assuming that the board will prescribe—would be in the general supervision category of what the board wants done in the University Systems; and under the State Superintendent, then, would be your Executive Officer as the present Board of Regents has. But this not only elevates the State Superintendent, but also it is, I think, a very economical and efficient manner to see that we are going to get the best education for the children of the State of Montana, and adults, that we can possibly get; because no matter how far we go along, I'm sure we're always going to be short, dollars and cents-wise. So this, I think, basically then, pretty well describes what I was talking about. I would like to—as long as I'm on this, I'd like to say that the only—I have only received two pieces of correspondence from my school at home. The first one was just a letter, which I felt very complimented on, from the Superintendent, that said he regretted that he didn't see me to express his feelings, but he thought that education in the State of Montana wouldn't have to—or would be safe as long as I was working on it. The second one was the correspondence that I received just shortly before I testified before the Education Committee, and had to do with figures of what is happening in our school system. In 1967 we sent 87 percent of the graduates out of Fort Benton High School to a 4-year college. Last year we sent, I believe it was 65 percent. I testified to this effect before the Education Committee, and I also testified that I thought as far as boards were concerned that vocational education should have at least as big a say as the University Systems. I believe that under one board they have this. I do want to take a little issue with the Chairman of the Education Committee when he is quoted in yesterday's *Great Falls Tribune* as saying that the School Boards Association is a special interest. I would hope that they are a special interest, but not in the manner Mr. Champoux referred. The school boards in all of our area are elected by you and I, if we're doing our job. What kind of pay do they get for it? They get long hours, we give them a lot of heck at times, but this is it. Now, as far as I'm concerned, there is only one goal that the school boards have, and that is to see that the best education system as can be provided is provided. I knew that Mr. Champoux would either snow me or shampoo me under with his eloquence, and I did come across—see a letter which was written by the Executive Secretary of the National School Boards Association which, in part anyway, says much more eloquently than I can what I mean. So I would like to read just a little bit from this letter—about three paragraphs or something like that. "Simply stated, I believe in one board of education for each state, composed primarily of laymen appointed by the Governor, confirmed by the Legislature. This board should have the power to oversee the curricula of all schools in the state elementary, secondary, collegiate, graduate, private, technical and parochial"—well, I don't know—well, I guess they do now in parochial, too. "The board should determine standards for health, safety of students, and standards for reasonable productivity. It should establish criteria for professional certification. The board should have the power to hire its executive officers, including such persons as the State Superintendent of Public Instruction"—well, we've already knocked that out—"and the Chancellor. The arguments for such a system are based upon simple assumptions and inherent logic. One: education should be viewed as a continuous process necessary in our complex society from cradle to the grave. Education at one level depends on the previous and is responsible to the next. It isn't a different kind, one level to the next, obeying different laws of learning. Education should strive for efficiency. The money for education comes from one pot, usually appropriated or authorized by the State Legislature. One board speaking for all education can present a unified and intelligent budget which takes into account all the priorities of the people. It can articulate among the levels of education and keep them in balance. The governing structure itself should be simple. It should be able to act quickly to change circumstances." I just want to interrupt here and say, one reason there is no mention here as to length of terms is to leave it open so that the Legislature can do this in case this board isn't responsive, and so on. "The State Board of Education should be powerful and widely respected. With only a piece of the action and without adequate power, it is forced to operate by importuning, cajoling, and mere persuasion. Some critics of a one-board system will quickly counter out of fear of the power of one board. This is inappropriate, because a state board is always modified by the Governor, by the Legislature, by the educational professionals, and by the weight of public opinion."

(President Graybill assumes chairmanship of Committee of the Whole)

**DELEGATE GYSLER:** "Other critics will argue that the unique attributes of the various levels of education require separate boards.

Higher education will be the first forward with these claims. On the other hand, boards of higher education have allowed colleges to become curricularly inappropriate, have feared crediting societies more than their public, have maintained questionable undergraduate majors, and so on. Many of the problems of higher education—its too often inappropriateness and its too low productivity per dollar expended—are due to the autonomy which has been granted to the institutions of higher education in the past. A third set of critics of one board in government will emerge from the professional groups who want self-regulation. This argument I dismiss with a harsh and insensitive caveat that a profession which is self-regulating is, from the standpoint of public interest, unregulated. Many states have one board for public elementary, secondary schools and one for—and one or more for institutions of higher education. In almost every state, Legislatures are faced with powerful lobbying factions and the demand for funds beyond reasonable capacity to produce. Jurisdictional battles are common, and Legislatures very often acquiesce to the most powerful forces rather than the most logical. Having one state board won't end the philosophical problems for the Legislatures but will simplify the interface." I heard the Chairman say about how many people testified before his committee in favor of the two boards, and it sounded like almost everyone there did. Would Mr. Woodmansey yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Woodmansey?

**DELEGATE WOODMANSEY:** Yes, I would.

**DELEGATE GYSLER:** Mr. Woodmansey, you're on that committee—on the Education Committee. Who testified for two boards, and who for one board? What was the—

**DELEGATE WOODMANSEY:** I assume you're asking me because you see I voted no in some way in this area. Yes, I'll be glad to respond to this, and I hope as accurately as my memory serves me. The—we had several members of the present State Board of Education who came before the committee. If my recollection is right, I don't remember any of them asking for a two-board system. We had the State Superintendent of Public Instruction, who came before the committee and, as I heard it—I didn't hear that she was opposed to this. The Governor came before our committee, and it was my understanding, after listening to him, that it could be either way; that he could live with the one board or have the two-boards system. Of course, the Montana School Boards Association was opposed to a two-board system. The Montana Education Association, which represents a majority of the teachers in the state, was opposed to a two-board system. I may have omitted others who appeared before the committee. I'm sure maybe someone else could contribute further, but this was my feeling after listening to them.

**DELEGATE GYSLER:** Thank you, Mr. Woodmansey. Another point I want to bring out is what the Chairman said about "body corporate". Well, I've been President of a body corporate for about thirteen years, and I know how they work. I've worked with a lot of other body corporates, and the board of directors run them; and that doesn't leave an awful lot for the rest of the people—which, in the case of the people of Montana, you would be the stockholders and the Board of Education would be the board of directors.

**CHAIRMAN GRAYBILL:** Mr. Gysler, do you have any idea about how much longer you'll need?

**DELEGATE GYSLER:** About 2 or 3 minutes.

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE GYSLER:** So it is fine, like the Chairman said. The boards of school districts are now body corporates, but this is in the Legislature. It is not in the Constitution, and to me there is quite a difference. I want to just, in conclusion, say that this article that I have proposed is not proposed because of any special-interest group. The only thing that I have had to do with education is paying taxes, and paying my own expenses because I'm interested in it. And I certainly hope that when this body does arise and report, that you will accept this amendment.

**CHAIRMAN GRAYBILL:** Mr. Driscoll, you have an amendment. Do you want the Chair to read it?

**DELEGATE DRISCOLL:** Yes, I would like—

**CHAIRMAN GRAYBILL:** Will the clerk please read Mr. Driscoll's amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Sections 9, 10 and 11, being pages 5 and 6 of the Education and Public Lands Committee Proposal Number 10, by deleting these sections in their entirety and inserting in lieu thereof—quote 'The general control and supervision of the State University and the various other state educational institutions shall be vested in a State Board of Education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of 14 members; the Governor, State Superintendent of Public Instruction and Attorney General being members ex officio. The other 11 members thereof shall be appointed by the Governor, subject to the confirmation of the Senate, under the regulations and restrictions to be provided by law.' Signed: Driscoll." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, Mr. Driscoll proposes an amendment which proposes a one-board system. I might quickly recap for you. The majority wants a two-board system. Mr. Gysler wants a one-board system with the Governor and Attorney General ex officio and the Superintendent of Public Instruction as the executive officer. Mr. Driscoll wants a one-board system with the Governor, the Attorney General, and the Superintendent of Public Instruction ex officio.

Mr. Driscoll.

**DELEGATE DRISCOLL:** Mr. Chairman, I'll be relatively brief. I lack the eloquence of the Chairman of the committee and his persuasive manner and this type of thing, but most of you people will notice that this is the present provision in our Constitution, with one minor change. The board now will consist of 14 members, with the Governor, the State Superintendent of Public Instruction and the Attorney General being ex officio members. As I ran for this Constitutional Convention, I made the statement that there were a good many parts of our Constitution which I liked and which I thought should remain; and the present provision regarding the State Board of Education is one of these. In my testimony before Mr. Champoux's committee, I made some statements which I regret. One of the statements was that I didn't want vocational-technical education mentioned in the Constitution. I can see now that I made a mistake. I look around this assembly here, and I see at least two people, two members of the Legislature—one from the Senate and one from the House—who in 1952 and 1954 attempted to establish with me a vocational-technical center—centers in Montana. From the beginning, with Paul Harlow and Charley Mahoney—Charley Mahoney in the Senate and Paul Harlow in the House—we developed an adult education provision which is now prevalent in the state. We also laid the basis for our vocational-technical centers. I would like to report to the Committee of the Whole the present status of our vocational-technical centers. The status is ambiguous. We are in a netherland someplace. The way the law is written and is applied, the budget and curriculum are determined by the State Board of Education; administration, then, is left in the hands of the local school district in which the vocational-technical center is located. However, the largest part of administration is budget and curriculum determination. I would also like to remind the members of this committee that there are no local district funds involved in the financing of the vocational-technical centers. This is funded entirely by state funds and the 1-mill countywide levy. And this experiment in education, which is probably the most exciting in the United States at the present time—we are in a situation which is rather nebulous. We don't quite know where we belong; we don't quite know where we are going. And under the proposals by the majority, we still wouldn't know where we belong. I don't know if the University System is going to exist as it is now, 20 years from now; I haven't the faintest idea. But if we take the majority's proposal, it is going to exist. I don't know where vocational-technical centers will be 20 years from now, but I do know that it has shown—that they have shown the greatest growth of any educational system that's in the state and that they have been received well and happily by most people. I would also like to talk briefly about the State Board of Education as being unresponsive. I venture to say that I have had more personal experience with the State Board of Education than any other member of this floor, and I have found those people responsive, dedicated, courageous, and concerned. I am sure that this little amendment which I propose, and a few more statutory meetings allowing them to develop a good committee system, will be in the best interests of education in general in Montana. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** If we could all be back here promptly at 20 minutes to 4:00, why, then I'll move to recess. I so move, Mr. Chairman.

**CHAIRMAN GRAYBILL:** The motion is to recess until 20 minutes to 4:00. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Committee of the Whole in recess from 3:27 p.m. to 3:42 p.m.)

**CHAIRMAN GRAYBILL:** Mr. Wagner, will you close the door for me, please? The committee will be in session. Ladies and gentlemen of the committee, we now have before us, on Section 9, 10 and 11, three proposals—the majority proposal which proposes a two-board system, a proposal by Mr. Gysler which proposes a one-board system with the Governor and Attorney General on the board and the Superintendent of Public Instruction as the executive officer of the board; then we have one by Mr. Driscoll that proposes a one-board system with the Governor, Attorney General and Superintendent of Public Instruction all on the board. The matter is open for discussion.

Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates, the discussion of the three plans has centered down on whether we had two boards or one board. That's a very important item, but I think there's another important item that somehow is just a little bit lost in my mind anyway in the three discussions. And I'd like to take just a moment to get the information for you and for me, to try and clear up, and that's the position of the Superintendent of Schools in all three plans, because we have to face the fact that when the board goes home, somebody has to be left there to man the shop. And one of the big questions I think in the whole proposition is, who works for whom? Now, if Mr. Driscoll would yield to a question, I would like to ask one.

**DELEGATE DRISCOLL:** I yield.

**DELEGATE ARBANAS:** Mr. Driscoll, the plan that you have is pretty much like we have it now, with the Superintendent of Schools relating strictly—or in a, you know, running sort of capacity to the elementary and secondary and in an advisory capacity to the higher education. Would that be a true statement?

**DELEGATE DRISCOLL:** It's exactly as it is now. She does not act in an advisory capacity to the higher education; she acts as a member of the Board of Education.

**DELEGATE ARBANAS:** A member of the board, yes, right. Fine. Thank you very much.

**DELEGATE DRISCOLL:** Thank you.

**DELEGATE ARBANAS:** Mr. Driscoll—Mr. Gysler, would yield for a question?

**CHAIRMAN GRAYBILL:** Mr. Gysler? Will you yield?

**DELEGATE GYSLER:** I yield.

**DELEGATE ARBANAS:** As I understand your system—I'd just like to check it out—you have made the Superintendent of Schools the Executive Secretary of the board, is that right?

**DELEGATE GYSLER:** No.

**DELEGATE ARBANAS:** Could you yield for another question?

**DELEGATE GYSLER:** Yes.

**DELEGATE ARBANAS:** Would you picture that role a little bit clearer for me.

**DELEGATE GYSLER:** Certainly. Mr. Arbanas, what I have done here is to make the Superintendent not the executive secretary, but the executive officer; because I feel that under this system, then, the higher education, then, will have their executive secretary, and so on. Really, what I am attempting to do with this is centralize everything; and in relation to the higher education ends, that will be more a supervisory there in the fields than the State Superintendent is now in. The functions, I think, will stay the same, relatively.

**DELEGATE ARBANAS:** Will Mr. Gysler yield for another question?

**CHAIRMAN GRAYBILL:** Mr. Gysler, will you yield?

**DELEGATE GYSLER:** Certainly.

**DELEGATE ARBANAS:** In other words, the relationship to higher education is different than the relationship to lower education.

**DELEGATE GYSLER:** I would say yes. I don't envision, except from an overall, probably responsibility standpoint—a member of the board could call up and say to Joe Doakes, Executive Secretary, "Get that stuff done." They would have somebody there checking and so on, but more—not actually under, but not too much control. I envision that the board really runs that and the State Superintendent is more there—as at present. But it centralizes it.

**DELEGATE ARBANAS:** Mr. Champoux, would you yield for a question?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I certainly will.

**DELEGATE ARBANAS:** As I understand the board system you propose, I get the impression that the State Superintendent of School would be advisory to one board and be advised by the other board. In other words, you've changed the lower board and say that it's now supervisory, so she's more or less being advised by them; and the higher board, she's advisory to them, so to speak. Would that be true—accurate?

**DELEGATE CHAMPOUX:** Yes, that is true. See, our problem with the situation there is—and I think one of the major defects of Mr. Gysler's plan is—that you have an elected official. Now, under his proposition you're having a lay appointed board giving directions to an elected official. I—

**DELEGATE ARBANAS:** Thank you very much.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** I'd like to submit to the Convention that, as far as I see in the three plans, there are strengths and weaknesses in all of them. But the thing that would worry me in all three plans is with the higher University System, that there is really nobody in charge when everybody goes home. Now, maybe I'm wrong, but that's the way it seems to me; that when it's all said and done, there's different ways that the board control. But I would like to have seen in the plan, and I think Mr. Rygg brings it out in his discussion, that the Commissioner of Education, there's—I feel that primary and secondary under all three plans is pretty well taken care of by the Superintendent of Public Instruction, but even though we have this new, independent Board of Regents, like Mr. Champoux would suggest to us, there's still no one to take care of it on a day-by-day basis when the—everyone's gone home.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, could I ask Mr. Champoux some questions, please?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I yield.

**DELEGATE BOWMAN:** Mr. Champoux, the first question that I'd like to ask is, how do the two boards mesh with the elected Superintendent?

**DELEGATE CHAMPOUX:** Mesh? In what—

**DELEGATE BOWMAN:** Well, I can't see how the three of these entities are going to work together—the two boards and the elected Superintendent.

**DELEGATE CHAMPOUX:** Well, I don't know. In what specific way? They're going to meet together over mutual concerns, and I have recommended that we amend that major board so they submit a combined budget, if that's what you mean. Is that the problem?

**DELEGATE BOWMAN:** Well, it's just the concept that I'm having a little trouble getting—

**DELEGATE CHAMPOUX:** Well, we have an elected Superintendent. Now, if you notice in the Executive Article, it says her duties shall be prescribed by law. Now, we have a board here, and we also mention "whose duties shall be prescribed by law". Now, the reason why we've done that is to keep it flexible, see? Is this what you wanted, or—

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, could I ask Mr. Champoux another question?

**CHAIRMAN GRAYBILL:** Yes, you could. Mr. Champoux.

**DELEGATE CHAMPOUX:** I'll yield.

**DELEGATE BOWMAN:** Who will really be in charge of education in Montana—the elected Superintendent of Public Instruction, one or two or both of the boards, or the executive which is elected by the Board of Regents?

**DELEGATE CHAMPOUX:** Well, what we are after here is a combination of things. First of all, we wanted direct participation by the people; and this, as we see it, are the members of these lay boards. Secondly, we wanted some involvement by the Executive Branch, directly and indirectly. Directly, we have it through the Governor's presence; indirectly, because he nominates these board members. We also wanted some involvement in terms of the Legislature, and this is why we have confirmation. Another direct involvement by the electorate is the direct election of the State Superintendent.

**CHAIRMAN GRAYBILL:** Mr. Champoux, that's not responsive. She wants to know who runs it.

**DELEGATE BOWMAN:** Thank you, Mr. Chairman.

**DELEGATE CHAMPOUX:** Who runs—

**CHAIRMAN GRAYBILL:** Yes, she wanted to know who runs education in the state under your plan, and you just told her a lot of other things. I'm just pointing out that you haven't answered her question.

**DELEGATE CHAMPOUX:** As I see it, the boards.

**DELEGATE BOWMAN:** Could I ask just one final question, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Yes, Mrs. Bowman.

**DELEGATE BOWMAN:** Have you considered letting the Governor vote on either one or both of the boards?

**DELEGATE CHAMPOUX:** Yes, we did.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** And you decided that was not a good idea?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Yes, we did. We felt that his influence perhaps would be too much, in the fact that he's going to appoint the board members and they come within his term.

**DELEGATE BOWMAN:** Thank you very much.

**CHAIRMAN GRAYBILL:** Very well.
Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I just want to point out that on the basis of the way these three articles are, the Superintendent of Public Education runs the whole educational system and is the officer who has the tie vote to swing the thing if an issue arises. Because under Section 10 there's a board of seven on public education; on Section 11, there's a board of seven on higher education; and Section 9 expressly says that in the event of a tie vote, the Superintendent of Public Instruction votes. So when the higher education people confront the lower education people, the swing is the Superintendent of Public Instruction. And there isn't any other way you can put these together. And I just have to say that we ought to note that that's the kind of architecture that we are drafting.

**CHAIRMAN GRAYBILL:** Very well.
Mrs. Warden.

**DELEGATE WARDEN:** Mr. President, would Mr. Champoux yield?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** (Inaudible)

**DELEGATE WARDEN:** I notice here, under Section 10—or, no, in Section 11—you say the Board of Regents of Higher Education, which shall govern and control the academic, financial and administrative affairs of the Montana University system. My question is this: would you envision that the budget of each unit would be presented by the proposed Board of Regents to the Legislature, or would each school—that is, each university unit—propose its own budget and come to the Legislature and see how many votes they could garner to get their budget passed in relation to the other person's budget, which is the way it has been operating with a Board of Regents —that is, the Board of Education working 95 percent of the time as a Board of Regents?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Neither of those options; and that is that each unit would come to the board, and that's where they would do their lobbying. Then it would be the board, under the present system, that would present the budget—combined budget—to the Legislature. And then, when it came back, it would have to be proportioned out according to the original budgets from the different units. Now, if we follow my recommendation, though, and get an amendment to that upper board, then both boards will come together as a common board and submit a combined unified budget to the Legislature. I don't see these people lobbying, no.

**CHAIRMAN GRAYBILL:** Mrs. Warden.

**DELEGATE WARDEN:** Mr. President, may I ask him another question?

**CHAIRMAN GRAYBILL:** Mr. Champoux, will you yield?

**DELEGATE CHAMPOUX:** I yield.

**DELEGATE WARDEN:** Under the present system, the Board of Regents, to my knowledge, has not determined a priority system on buildings on the campuses. Now, by your plan, do you envision that this would work better—that the Board of Regents would do this sort of thing and that they would come to the Legislature with priorities for the different schools?

**DELEGATE CHAMPOUX:** I would assume that this would be argued out within the boards themselves—within the board itself, before they ever came to the Legislature. And they would have the power, then, to internally decree where these priorities would go. As of present, they don't.

**DELEGATE WARDEN:** Well, why would they—

**CHAIRMAN GRAYBILL:** Mrs. Warden.

**DELEGATE WARDEN:** Mr. President. Mr. Champoux, would you yield to a third question?

**DELEGATE CHAMPOUX:** I will yield.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE WARDEN:** How would you remedy this?

**DELEGATE CHAMPOUX:** I guess—

**DELEGATE WARDEN:** There is nothing in the article that says that things will operate like this. The duties are prescribed by law, of course.

**DELEGATE CHAMPOUX:** That's what body corporate is all about. They will have the power then. One of the things that was considered in this committee was—and it was a proposal—I forget who put it in—that each unit have—become a body corporate. That would be probably the worst thing that could happen; but, you see, under this system the board is the body corporate. They have the right, then, to determine the priorities.

**DELEGATE WARDEN:** Thank you, Mr. Champoux. Thank you.

**DELEGATE CHAMPOUX:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Well, Mr. Chairman, I think Mr. Champoux spoke very completely on the two-board system and on the body corporate, and I planned to speak at some length on the same subject but now find that I don't want to be repetitious, so my remarks will be brief. The Education Committee has submitted to this body a real blueprint for reform in our system of education. The two amendments now before you contain very little change from 1889. In fact, they lift the language from that section in many ways. I'm not sure that Montana wants to remain one of two states with a single-board system, and I hope that, in our haste to get away on a Saturday night, we give this more than cursory attention. I want to call your attention to an incident that I witnessed last year in connection with the two boards. The six University Presidents were in town for a meeting with the Board of Education and the Board of Regents. The board was in the process of a hearing upon a complaint from a teacher in the primary school who had been discharged. The two—the six University Presidents were kept waiting for 2 days during the period of this hearing. And I'm sure the teacher's complaint had merit—and I don't want to make any accusations in that way. But it's an illustration of the inefficiency and the impossibility of operating this system, this tremendous system, under one board; to keep those six Presidents here, waiting for 2 days during this hearing on a primary school teacher. Now, I want to talk very briefly about the body corporate concept. Mr. Champoux covered it completely. But I submit to you that you now have before you an example of what's happening in the University

System because of the lack of a body corporate type of organization. The University of Montana unit at Missoula recommended three architects for the construction of the new Science Building to the State Board of Examiners. These architects were all rejected by the State Board of Examiners, and another architect chosen. And I'm certainly not going to pass judgment on his qualifications. Nevertheless, you've all read in the press—it's been in every daily paper—that building is in a mess; that it does not serve its purpose; that it's going to take substantial funds to put it in shape. Now, had we been operating under the body corporate system, the State Board of Examiners would not have been able to decline the recommendations of the University System for the hiring of those architects. So far as the housekeeping that Mr. Arbanas is concerned about, the board can easily take care of this themselves through an organization or a director, located here in Helena, to perform such functions as the board may direct. But I hope the Convention will give the committee report serious consideration. We do not want to step back into the 19th Century. I urge the adoption of the committee's report and the rejection of the two amendments. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. Chairman, I'd like to speak in opposition to the two-board system. And we've heard a lot of testimony today about the different studies that have been presented and so forth, and I just would like to bring up a few figures that came from the Session Laws: 1961, our general fund biennium budget was $71 million—that was 1961; 1971, our last session, was a hundred and eight-five point six million dollars. And it's estimated and been mentioned on the floor that our 1973 biennium budget would approximate $250 million. I don't know how we're going to raise that kind of money, but I just wanted to mention that in the 1971-73 university appropriation budget, the total was $86,000,772 million which is about $15 million more than our total general fund budget in 1961 for running all of the state government. And I notice, in this $86 million, with one board, we have $475,000 for the office of the Executive Secretary of the Montana University System. The State Board of Regents has $300,000 for a total of $775,000 per year, or a million five hundred and fifty thousand dollars for the biennium; and this is for one board. So if we were going to have another board, we would probably get another million and a half dollars every biennium, if we're going to go on this basis.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, I'm not sure exactly how we're going to reconcile any of these three plans with what we've done previously. The majority—the minority report that this committee adopted of the Executive Committee, we decided to elect the Superintendent of Public Instruction. The rationale behind that decision, which was advocated by the Education Committee, was that the Superintendent would be the major state educational officer. I don't believe, although they provided that the duties would be provided by law—that was the theory; that this was the chief educational officer of the State of Montana. I do not feel that any of these three plans that have been proposed encompass that idea, even tacitly. Mr. Gysler's proposal—I think I agree with Mr. Arbanas. It does make her the Executive Secretary. She can't even vote, and yet she's supposed to be one of the policy planners, and she can't even vote on that board. Mr. Driscoll's plan, also, she is an ex officio member. I would hardly think under his plan she could be the chief educational policy planner. Now, under the majority report, the Superintendent of Public Instruction is mentioned several times. The only real major function that is stipulated that she serve is that she may vote in case of a tie when the two boards meet together and that she serves as an ex officio member on both of the boards. In neither case is she really a part of the policy-making process. I think that this should, perhaps, in some way be reconciled. Under the majority plan—which I do favor the two boards—it seems to me a kind of a vacuum in terms of who is really going to be responsible. You have the Board of Regents of Higher Education who elect their own executive officer. You have the Board of Public Education, and there's no provision at all for an executive officer. Maybe it can be inferred that the Superintendent of Public Instruction will be the executive officer of that board, but it certainly doesn't say so. Most of the state Constitutions, at least the last nine that have been adopted, you know, do not try to reconcile what we're trying to reconcile here—the fact that we've already got the Superintendent of Public Instruction created in the Executive Branch, which really has nothing to do with the Executive Branch but deals with education. And here we are in the Education Article and we're trying to work around what we already adopted in another article that didn't have anything to do with that article. It seems that we're really going to have to decide if what we did in the Executive Branch, you know, if that's what we really intend. If we really want the Superintendent of Public Instruction to be in charge of the education of the State of Montana, then I think all three of these plans are going to have to be reexamined.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman, the executive plan has been adopted, and it does prescribe that we elect a Superintendent of Public Instruction. I think that there was a good deal of merit in Mr. Rygg's plan, and I toyed with the idea of having an article that would read something—or suggesting one that would read something like this—that the education—the Superintendent of Public Instruction should be the Executive Officer of Education in Montana and that a board could be appointed. I have since decided, and I think I would support the amendment that was offered by Mr. Gysler, for the reason that, in my opinion, based on the testimony that the Executive Committee had with the educational officers as well as the joint committee meeting with the Education Committee, that we found this situation developed. We find a lot of headless monsters. The vo-tech doesn't have any direction; the community college doesn't have any direction. All of these other factors in education aren't interrelated and interconnected, and we don't have one board or one power to direct education in Montana. As I told in the colloquy that we had with Mrs. Colburg, I said in my opinion it seemed to me that what we need in education is integration, not segregation. I think that this would be based on the experience of what I've observed down through the years as far as the University System. You've got competing units of the six units, and without having some sort of an executive officer, you're going to be in trouble. I think we could take a page from what happened in the Department of Administration when we established a board and set in motion a group which takes the prison, the home at Boulder, and all of the other units, and puts them together. And they've had little trouble with the Legislature, and they have effectively worked. I think the same thing could be done here, and in—under Mr. Gysler's amendment, the Superintendent of Public Instruction could employ, just as she has in other instances, could employ someone to be executive secretary of the university units and could work. We had this testimony from some of the board members; and to mention another special interest which Rick didn't convey or mention, the MEA has taken the position that they retain the present constitutional provision, which establishes a single State Board of Education capable of governing and supervising all levels of public education. We've heard statements today and we've studied, and those of us who have been in the field of education recognize that there are some real changes going on in education. I think that Mr. Gysler pointed out that probably by 1980, less than 20 percent will be going to college. There will be special training and special training programs. I think that in our testimony it developed that perhaps there needs some revamping in the elementary and secondary education program. It requires and will require some intensive study on the part of some boards, and I think that instead of integrating—or segregating and dividing this all up, we would be a lot better off to retain a single board.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, would the committee turn to page 5, line 30, and just listen to the following: "The State Board of Education shall meet at least quarterly with primary attention given to a unified budget. The Superintendent of Public Instruction shall be Chairman of this board."

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** First of all, I want to answer Mr. Martin. Mr. Martin, on your desk yesterday morning you received a cover letter from me with three other letters in it in support for this proposal. The top one is from the Montana Education Association, which says—they did—you're right—originally oppose at our hearings the two-board system. However, now they unequivocally accept it. It says: "We have studied the committee proposal carefully and wish to commend you and your committee for developing an excellent article on education for the new Constitution. The proposal shows the results of a great deal of work, careful thought and excellent leadership. The only suggestion we have is that there should be constitutional safeguards for the investment of state trust funds." This was taken care of last Saturday in the Revenue and Finance Committee thing. "We should like to express our appreciation to you and your committee members for the courtesy and consideration given to all who wished to appear before the committee", and so forth. The last sentence—"Again, thank you very much for your excellent work. It's been a long, arduous task and we are careful—we are grateful." The MEA does support the two-board concept that we have proposed, unequivocally. All right, let's look at Mr. Gysler's—may I speak to Mr. Gysler's proposal?

**CHAIRMAN GRAYBILL:** Certainly.

**DELEGATE CHAMPOUX:** All right, let's look at this—

**CHAIRMAN GRAYBILL:** Briefly.

**DELEGATE CHAMPOUX:** Yes. Yes, sir. (Laughter)

**DELEGATE CHAMPOUX:** Fourteen members of the committee—we looked at that. Can you imagine 14 members sitting in one room, all agreeing? It's too many on the committee. All right, we're concerned about vo-tech. If you look at ours, it's very flexible. It takes care of vo-tech all the way through and for the future. Mr. Gysler's and Mr. Driscoll's proposition doesn't get at the problem. All right, let's talk about the comment in the *Great Falls Tribune* yesterday. That was not directed at the state—the local state—local boards of education; it was directed at a special interest group that's been lobbying this Convention since the day it opened, the Montana School Boards Association. All right, if you have one board, the upper board, you have one budget. How can you say there's going to be competition? Another thing, the State Superintendent of Public Instruction overwhelmingly supports the two-board principle, and if she is in this room today, we can bring her right down here and she'll testify. Let's look at the people—

**CHAIRMAN GRAYBILL:** You can't do that, Mr. Champoux.

**DELEGATE CHAMPOUX:** I know. (Laughter) I know, but I just want to clear up some of these misconceptions here. If we look at the total of the people that testified before our committee—and here it is, it's compiled. These are the people that testified for the two-board system: the Montana Federation of Teachers; the PTA; Bob Jovick, who was representing the Montana Student Presidents Association; the County Superintendent of Schools Association; Robert Pantzer, the President of the University of Montana, representing the Presidents of the University System; James Short, Western Montana College. Governor Anderson was ambiguous—the MEA was not—(Laughter)—I didn't mean that as a—he was going both ways, sir. (Laughter) It was unclear. Dolores Colburg does support the two-board system. The faculty center at Eastern Montana College, all the community college presidents. Who were the groups against it? The Montana School Boards Association and the vo-tech centers. Thank you, sir.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** First I would like to announce to the group my interest in education, the fact that I've been a part of the University community as a student and as a part-time student and as a part-time teacher and a faculty wife. And I have also spent a lot of time with Legislators who have been very much concerned about the direction of our University program. Somehow, I think that most of us found this whole issue to be one of the most frustrating ones we dealt with during the campaign, and I think that I came over here expecting somehow for the—a light to flash and all the problems be solved. My frustration, I think, is that I would like to see some really strong direction, some central direction to the whole University System, and I think that most of us involved in education feel this same thing. Yet we see this program of a Board of Regents and we're not sure that this Board of Regents is going to be very much stronger than our Board of Education, which also sits as a Board of Regents. And we considered all kinds of ideas. You know, we thought about letting the Board of Education be elected or having the Legislature elect the Board of Regents or having nominations come from groups of faculty people and student people and taxpayers around the state so that we got a group of people who would really concentrate attention on the problems. We've also considered the fact that Mr. Rygg brought up, that probably the one thing we need is some really strong leadership at the top, someone who is really in charge. And it's frustrating to look at a plan and not be able to determine who really is in charge. But on the other hand, I think that if we consider the various possibilities that we have to work with and look at the majority plan report, there is a great deal of flexibility here. It's not giving us, you know, a beautiful answer that we can see in black and white that is going to start working next year. It leaves a great deal to the Legislature. I can see a plan such as Mr. Rygg proposed actually working under this two-board system. I can see the possibility of the elected Superintendent of Schools being given some real responsibility, maybe almost complete authority in the area of public education. I think it would be perfectly possible for the Board of Regents to hire a very strong administrator who would be something like a Chancellor or a Commissioner of Education. I think that the possibilities that are presented in the majority report are the kind of possibilities that our Legislature and our Board of Education can work with for a long time to come, and that won't be limiting. On the other hand, I look at the two amendments and I can't see, really, any change from what we have now, which has not really proven to be very satisfactory. The only addition is really the addition of a couple of more board members. And true, this could help, but we don't have any indication that a couple of more people on the board are going to make that much difference. I don't see this as any great panacea to the problems, but I do think that the majority report has been looked at by educators of all kinds from around Montana and has given them some confidence that this is a good way for us to go. I don't think by debating this thing all night tonight, we're going to have—come up with some original, great idea of what to do, and I strongly recommend that we go along with the majority report. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I've listened to the arguments pro and con, and I gather that our paramount reason for being here is, first, of course, to make sure that the citizens of the State of Montana are protected with respect to their rights as citizens; and second, when we construct government, that it be efficient and economic. I've looked at the majority report, and I think what they're trying to do is give us a more efficient and more economical system. In the professions, there is a substantial trend towards specialization. The medical profession has demonstrated that to us over the years, and as a consequence they've increased the progress and the advance of medical science toward the frontiers that have provided us with problems. The legal profession is moving in that direction; and I submit to you that as the educational system expands and becomes more complex, that same degree of expertise is required. The higher education system of Montana has problems that are opposed to the problems that exist in the public school system. I think that it's far better to have separate groups who are connected with those particular systems who, through time and experience and devotion to that particular area of educational jurisdiction, can develop the type of expertise that's going to result in efficiency and economy. And, consequently, I submit that the two-board system commends itself to us at this time. I note, too, that all 11 members of the Education Committee support the two-board system. I think after 4 weeks of study, and with respect for their position as individuals particularly interested in education, that they should be recognized for their expertise in the area. And unless we have some real reason for disagreeing with their report, we should accept it. I do have one concern, and I share this concern with my fellow delegate from Butte, Mr. Driscoll. I think the vo-tech educational program is probably as important a program as we could have in the State of Montana. I do not think a liberal arts degree for everyone is necessarily a good thing. I am satisfied that for the majority of the young men that want to find a place in the working society in which we live, that a vo-tech education for them is the real answer. And I would like to inquire of the Chairman of the Educational Committee, if he will return, as to the proper place of the vo-tech program with respect to the two boards. Mr. Chairman, may I inquire and will Mr. Champoux yield to that inquiry?

**CHAIRMAN GRAYBILL:** Will Mr. Champoux yield? Mr. Champoux, will you yield?

**DELEGATE CHAMPOUX:** I will yield, sir.

**DELEGATE DAHOOD:** Mr. Champoux, will you tell us under which board—the Board of Public Education or the Board of Regents—you would place the vocational education program of Montana?

**DELEGATE CHAMPOUX:** The Board of Public Education, sir.

**DELEGATE DAHOOD:** Thank you very much. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, I think that if you were to ask each member of this committee, they would be the first to say that they are not experts in this field. There are no experts in solving this problem; and I assure you, no matter which way we go, we will live with it and we will still have many problems. Right now, I can go either way and I'll be unhappy. (Laughter) Now, you're talking about a single strong head. We tried that. We had Chancellors. We had good Chancellors and they were strong Chancellors, but they could not last because they were too good. The last one was tremendous. So let's forget about that. And also let's go back and analyze our present operations. The people who control the purse strings of the University System are the people we send to this legislative body; and in case you don't realize how they function, let me tell you. The Appropriations Committee divides itself up into groups, and these groups go not only to the institutions, but they go to the university units. And they analyze and they talk with the presidents and the heads of the departments and ask them what they need for their operation of the University System. Now, they control the purse strings; and no matter what you do with the body corporate, the Legislature will control the purse strings. They've got to. Now, what they want with this body corporate, whether you like it or not, they want the money allocated to them and they want to spend it whatever way they please. If I were President, I would also. Wouldn't you? They don't want to have to answer to anybody, whether they use Mary Doe for secretary today and Helen Jones another time. They don't want to have to report back here to Helena how they spent their money. That's about what it means. They also want to have more authority about their curriculum. Now then, where does the present State Board of Education fit into this picture today? Actually they don't do much as far as administration is concerned. They advise the presidents. They approve curriculum changes, yes; and here's where you have problems. The President of one institution wants to put in a new course. The President of another one wants the same course, and we have a competition here, not only in the area of curriculum, but other areas. So this is a very difficult proposition to reconcile the differences between these university heads. It's a big problem. That's why the Chancellor couldn't operate, because it wasn't only the presidents, it was the downtown quarterbacks that were also pressuring the Chancellor. So let's reconcile ourselves to living with a board. Now, I'm thinking about this—I lean to Mr. Gysler's and Mr. Driscoll's system, because I fear very much the setting up of one Board of Regents as being—controlling our educational—higher educational system. Now, Mr. Champoux, I'm going to direct to you because you are the spokesman here. You're political science. Naturally we are concerned with the particular area we are centered. We're going to work for this political science, someone else is going to work for mathematics, and someone else is going to work for other areas of social science. What I'm getting at is this—we become centered in the areas in which we are trained, and in the process of setting up a Board of Regents, the Board of Regents is going to be concerned about higher education only. Why do we teach algebra today in high school? Why? Because the University System says you have to have it sometimes to get into our system. There are other matters we could talk about in that same area. They are determining what's going to come up from down below. Now, Mr. Gysler, you said you were proud about the fact that you had 67 percent of your graduates going to college. Very commendable, but I wonder if it is so commendable after the records we have seen over the past years. The people who are going to college are not too happy with college. Very slowly we are changing this concept of education. The need to make the student happy with what he's taking and also to fulfill a place in society. Now, here we have a Board of Regents, and all it's concerned about is the higher education system. Don't we need somebody who'll start with kindergarten to elementary to high school, vo-tech and college? Shouldn't they all be integrated? And I maintain if we have 12 members on the board, we can divide this board into three units—higher education, public schools and vo-tech. Can't they concentrate in this big board? Can't the four people go to the University System, which I'm sure the eight aren't doing now, and find the problems? Can't four do it better? Can't four people study vo-tech better? Can't four study the problems of elementary education better? And then, can't they come together like we have done here in our committee system and talk their problems over? They will not be competing for money. They'll say, "We've got to put this whole thing together." Therefore, I urge you to give serious consideration to the other two proposals. As I said, I'll be happy with any of them.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. Chairman, I rise in support of either the Gysler or the Driscoll, at the moment, amendment—whichever one we get to first, I guess. It seems to me like we've spent several hours here just a few days ago trying to decide how we could control the funds that the

State Highway Department gets and talking about having a fourth house, or whatever you want to call it, there. And now we're talking here today about doing the same thing again in the education department. I would think that with a proposal like Mr. Gysler has, that with the State Superintendent of Public Instruction as the executive officer of the board—now, I would think that she could operate as the executive officer, not as the executive secretary. And through this type of a provision, you could develop a organization whereby you could have a policy-setting board and an administrative person who could hire a staff and do a sufficient job along these lines and yet have this same type of control that we have now back through the Legislature, instead of getting another monstrosity, if you want to call it that, like we was talking about in the Highway Department just a few days ago for several hours.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman, may I respond to Mr. Hanson's remarks? Of course there is a fundamental difference, Mr. Hanson, in these two agencies—the fundamental difference being that the Legislature still has the purse strings on the educational system under the two-board, the committee report. The Legislature does not have the purse strings in the Highway Department. That's the fundamental difference. Any other comparisons, of course, don't—or inconsistencies don't bear water—hold water. Because, of course, the whole business of academic freedom, curriculum, and individual liberties are not involved in the Highway Department, so any inconsistency that might be taken—might be charged against me in this regard doesn't hold water. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. I'd like to follow up first of all from what Delegate Martin had to say about the need for integration, not segregation, and then what Delegate Aasheim and then what Delegate Hanson had to say. I really think we're going to divide ourselves into probably two groups of—you know, the one-board group and the two-board group. And I, at the present time, feel that the strongest proposition we have before us is the proposition of Mr. Gysler; but when I talked to him on the—with regard to the role of the Superintendent of Public Instruction, we got kind of mixed up in going back and forth; and I made some conferences with him. And I think it's important for us to consider as we see the strengths and weaknesses of both sides, that at least at the present time—and this is informal at this present moment—that he would be willing to accept this kind of an amendment if we ever got to that point: "The State Superintendent of Public Instruction shall be the Executive Officer of the Board"—that's as far as it's printed on the page—and then to go on and say, "and shall be the State Commissioner of the educational system of the state." The intention would be, of course, to take Mr. Gysler's plan and amplify, as Mr. Hanson was hinting at, that this being the Executive Officer would be equivalent to being the State Commissioner of Education. I think you'd have to go a long ways to find a more unified and stronger executive plan than that, with one board large enough to divide into several interest groups and a State Commissioner of Education, elected by the people, who is subject to the board and actually in control of the education of the state. I think that's where I stand right now.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I've listened here the biggest part of the afternoon to some very eloquent displays of orientation of education, but I will have to agree with Mr. Gysler's proposed amendment. I think that in all fairness to the people, the young people of the state, taxpayers of the state, that one board can better sit down together and analyze the problems of education. I think further that the State of Montana and the people of Montana are very much concerned today about education; and I think that as your Legislature convenes again and takes another look at education, that they are going to become more conscious of the problem. I have talked to many, many people across the State of Montana that are so thoroughly upset with the present system of higher education that they are in a quandary as to whether they even want to send their youngsters on to higher education, the way it is run today. Now, these are the problems that is confronting the educational system and the structure as it is today. If there isn't some improvement, you're going to have a taxpayers' revolt, because the educational system takes about a 70-percent bite out of your tax dollars; and we want to see good education, and we want everyone to take another good look at it. I can visualize, under the two-board system, that you will have a two-headed monster that will be going off in separate directions, pressuring the Legislature for funds, particularly for higher education, and you'll have the lower board for elementary education that will be working in the other direction. But if you have one board that can divide itself into subcommittees to study the different factions—vocational, elementary, and higher education—and then come together and put their feet under the table and talk about these things, I think they can provide better direction for education to go. I think that we need to really examine this proposition. I don't want to see a high dynasty set up, and I don't think any of us here do, and particularly the taxpayer. And I think your Legislature in the future will subscribe to these duties, and I think they will take appropriate action. And as far as having a directive—an Executive Director—they can also prescribe this if they see fit. But let's give the Legislature the flexibility and control that they need to have in working out the problems with future educational systems.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I think there are several things that have emerged for just a plain man looking at this situation. One is an obvious thing to me, that we need a division of labor. I think every person here knows that you would not expect anybody to be an expert on graduate education, as far as the University System is concerned, and have that same person really knowledgeable about kindergarten, elementary, secondary education. There just simply has to be a division of labor. And everybody who has spoken has admitted to this, whether we call it a basic one-board approach, or two, or what. If you don't call it a Board of Regents, then call it something else. But some group has to be specially concerned about higher education in this state or we will just simply take a step backward on this. I think most people understand—now, I'm just talking as a private citizen who doesn't know all the ins and outs of it—but when I vote for a Superintendent of Public Instruction, I, in the past few years, have voted for a lady schoolteacher. Now, in my mind, the Superintendent of Public Instruction relates to the State Board of Education and the state educational system the way the Superintendent of Public Instruction in Helena relates to our school board and to our elementary and secondary education. And I think the thing that is written into the majority report gives the Legislature—and into our whole Constitution—gives the Legislature a chance to spell this kind of detail out. That's where I think she or he belongs, and not having to try to find a person who can be an expert, both for elementary education and for higher education. Secondly, I think we all understand we need a combined budget approach. We do not want this business continued, of every different agency running to the state Legislature, vying for a position for appropriations. And with the kind of amendment that I have sent to the Chair for suggestion—for Section 9, of one sentence, I think we can make this State Board of Education that agency that can do this business of forming a plan for allocating funds and of one single approach to the Legislature about funds. Thirdly, and we're all agreed that the Legislature needs to have, and does have, in fact, control of appropriations and of money. Now, this is all complex. I'm sorry now that the report that came from the majority did not say that we call for one State Board of Education with two sections, because really, if you read it, that's what it says. We have two boards, we're calling them; and you've all referred to it as a two-board system. But Section 9 says "There shall be a State Board of Education", which, with a little doctoring and amending, can be set there to combine the efforts, particularly in terms of allocating funds and making approach to the Legislature in a one-board system. So I think we ought to stick with the majority report, beat on the floor on the vote these two amendments that are so-called one-board, though they call for different committees, and then take the basic approach that this committee has worked out in this complicated area for weeks and weeks of intensive study and amend it until it says exactly what we want.

**CHAIRMAN GRAYBILL:** Very well, the question is on Mr. Driscoll's amendment to Mr. Gysler's amendment, which is a substitute to the majority report. I merely want to point out that the Chair intends to debate this and then you may decide which way we're going. And we now have several other amendments, once we know which way we're going. Who wants to be next?

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I rise to speak on this issue from a multitude of conflicts of interest. You all know, of course, that I'm a professor of economics at the University of Montana. What some of you may not know is that I am the President of the University Teachers' Union, which is a local—Local 497—with the American Federation of Teachers, which is affiliated with the AFL-CIO. This is the second time that I have been President of that organization;

the first was in 1960. Since 1960 I have, off and on—mostly on—been engaged in a running battle with the administration of the University in a fight for more faculty rights as compared to the administration—more faculty power, if you will, against the administration. The administration, of course, represents the Board of Regents. Now, there is no question, I think, that a Board of Regents with more power, as the majority proposes to give it, could be more difficult for the faculty to deal with. Certainly, it is generally true that a weak administration or management, if you want to call it that, means at least the possibility of greater faculty control—it's easier to manipulate. Now, my second interest is that, being involved in the American Federation of Teachers, I'm necessarily involved in AFL-CIO. I know the state leadership of the AFL-CIO, many of the local leaders around the state. I, in general, sympathize with their objectives. You probably—many of you, I know, did receive a letter from James Murry, the Executive Secretary of the AFL-CIO, on the matter which is now before us; and that letter was critical of the majority proposal. It said a lot of things which I think Mr. Champoux has effectively answered; a lot of things which were in essence untrue and some other things which, if true, can certainly be handled easily in this Convention with little damage to the majority's proposal. On the other hand, the AFL-CIO's problems are real problems. What they are hung up on, to be quite frank with you, is the fact that they have had considerable amount of trouble in dealing with University unit administrators. I'm talking about negotiations for labor contracts by the plumbers and the other craft unions, such unions as that that deal with the nonacademic personnel. I can testify from my own experience that there are some pretty hard characters among the administrations of some of these units, difficult to deal with. And I can certainly sympathize with the AFL-CIO's feeling that they need to keep some kind of a handle, through the Legislature or through other means, on the University unit managements. Now, on the other hand, my interest—my third interest in this affair is that I am, as I said, a professor of economics at the University of Montana and have been for the last 17 years; and that I have two children who are attending two units of the University System at the present time, one at Missoula and one at Bozeman—one about to graduate at Bozeman in mechanical engineering. And as a professor and as a parent and as a Montanan, I want the best university that we can afford. I want it for myself, because I work there; I want it for my kids, because that's where they're getting their education; and I want it for all Montana kids with whom I have associated these last 17 years. Now, how to resolve these conflicts? Well, it seems to me there can be no question that the excellence of the University System must take precedence over any other consideration. We in the University Teachers' Union may find our problem more difficult if you adopt the majority proposal, but we will work with it and we will find ways to work with it. The AFL-CIO and some of its constituent unions may find it a little more difficult, but they're going to have to solve those problems in the way unions usually solve their problems—by better organization, by better negotiation. And, it seems to me, not by twisting the Legislators' arms and putting indirect pressure on the University administration. Now, I spoke of excellence. What does excellence in the University System require? It requires, of course, first of all, money. But we are always short of that, and we always will be short of that, and we are going to have to work within the constraints of the money that's available from the citizens of Montana. The second thing it seems to me that makes for excellence in a University System is a strong, unified management. The third thing is a faculty free from political intimidation—not necessarily from political influence, but political intimidation. Fourth, what excellence requires, it seems to me, is the support and understanding of the public, the people of Montana. Now, how will the majority proposal affect the excellence of the University System? In the first place, as regard to money, it's not going to get us more money; but it's going to mean the money we do get will be more efficiently used; and that's the same thing as more money. As to unified management, this, of course, is the name of the majority proposal. It means unified budget development, unified budget presentation, and it means unified management of the appropriated funds. As to the freedom of the faculty, it will, of course, mean more insulation from the Legislature, less of the sort of thing we had in the Morton Borden case. Although the Legislature is still going to be the boss, because he who controls the purse strings is going to call the tune and this body that meets here will control the purse strings—most of them, at any rate—and it will have the say as to the overall direction of the University System. Finally, as to the support and understanding of the people of Montana, I think Mr. Wilson is probably correct when he says that the people are at the present time somewhat disaffected with the University System, perhaps less so at the present time than they have been at times in the past. But I think the establishment of a strong Board of Regents that can really manage this system will have the effect, over a period of time, of increasing the people's confidence in the system, because the Board of Regents with that kind of authority will have the flexibility—will have the ability to really manage that they do not have now. Now, we may hope also that such unified management will lead to some elimination—or at least reduction—in the unseemly competition between the University units, which I think is a source of a good bit of the criticism of the University System by the people, and I think a justifiable criticism. Now, if you defeat the proposed amendments—which I hope you will, so that we can get back to the majority proposal—it is my intention and the intention of certain other delegates to propose amendments to the proposal which will allay some of the fears which have been expressed concerning it. On the matter of financial accountability, Delegate Aasheim says the University administrations don't want to report back here to Helena how they spent their money. This simply is not true. And I don't think anyone ever supposed that the majority proposal would free the University from financial accountability, particularly from a legislative audit. But if there is any such possibility in this proposal, then certainly we ought to amend it, and I will so propose to put in explicit provision mandating legislative audit of the University. As to the term "body corporate", the term "body corporate" as applied to the Board of Regents isn't any different than the term "body corporate" as applied to a local school board, and I don't think we ought to get hung up on that term. But if it is something like the public trust, which bothers people because of words, then take it out, because it isn't all that important. Now, finally, what to do about vo-tech? I wish that we could simply propose an amendment which would take care of Maurice Driscoll's problem, whatever it may be, because I don't really understand it. I don't think that anybody in the University System wants vo-tech. I don't think the Board of Regents would want it except as it relates—that term may cover such things as are presently in the program of Northern College at Havre, which is one of the very effective parts of the University System which should be under the Board of Regents now and in the future, and I think we must leave to the Legislature the flexibility, the ability as conditions change, to allocate responsibility as is reasonably necessary. I don't think there's any way that we can solve this problem here by some kind of an amendment to the proposal of the majority which would say vo-tech shall be under the control of one or the other boards, because as a practical matter, it is now partly under one and partly under the other. We do, of course, at the present time have a two-board system in the guise of a one-board system. And because the two boards are combined as one, they don't work very well, because the board spends so much time on its duties as a Board of Education that it interferes with its performance of its duties as a Board of Regents; and it would be certainly much more efficient to separate them. Now, as to Mrs. Robinson's problem, to the extent that it isn't simply because her car wouldn't start this noon, I think we can safely leave this question of the duties of the Superintendent of Public Instruction, as we said we would in the Executive Article, to the Legislature. And Mrs. Colburg apparently thinks, and I see no reason to dispute her judgment, that the result will be satisfactory. Thank you very much.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. President, fellow delegates. I feel, too, that since we have continued to call the Superintendent of Schools an elective constitutional office, that she should have responsibility and not be an ex officio board member, regardless of what type of board we set up. In coming here, as Dorothy has told you earlier, we were undecided what direction we must take—a one- or two-board. Early in the Convention we received a questionnaire that came from one of the Vice Presidents at the University at Montana State, and it was almost evenly divided amongst two groups as to a single board or a two-board. Most recently, I received a questionnaire from the Chamber of Commerce in Bozeman. In checking over their 18 questions, I find they're evenly divided. They have seven of their proposals—they've won seven and lost seven so far—to things that we have done here. As far as the two-board, they were almost two to one against a two-board. Now, this is a university town. The—I was wondering, Mr. President, now we have two substitute motions; would it be out of order to have an amendment at this time?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE BATES:** To the substitute—Okay.

**CHAIRMAN GRAYBILL:** Unless you have a third major plan.

**DELEGATE BATES:** No, I do not have a third.

**CHAIRMAN GRAYBILL:** That's fine. I want to find out which way we're going, and when we know which way we're going, we'll then consider and amend that particular plan as much as we need.

**DELEGATE BATES:** Okay, fine. Thank you, Mr. President. I feel very strongly that the Superintendent—and we must have responsibility someplace, and I don't feel the majority plan points to that responsibility. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Bates and members of the body, the Chair would like to observe that "ex officio" means that they are members of the board from their office. In both the Driscoll and Gysler plans, they would be voting members. In the board—in the majority plan it says ex officio, nonvoting members of—at least in Section 10—the Board of Education, and in that case they would not be voting; but ex officio does not mean you do not vote. Just so everybody understands.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman and fellow delegates, I rise to speak against the two amendments and in favor of the majority proposal which has come in. And I'm looking forward to seeing the amendments which you have on your desks relating to that, so I'll be brief. Let me give you a bit of the feeling of this committee as we've lived and worked together over these weeks. Rich Champoux I've gained great respect for as a human being, as a former Bostonian, and as a Montanan. He's a slave driver. We met early morning, at night, at noon, and listened to many, many people in many, many fields. And I feel he's done a very creditable job, as have other members of the committee, in assessing our needs and trying to lay the foundation for the future that would be a sort of growing kind of opportunity for our young people, whether they be in the lower grades or in vo-tech or in higher education facilities or programs. I think one of the problems has been, as we've tried to deal with this on the floor and as different individuals have tried to address themselves to it, something to the effect that Marshall McLewen, as he sort of put into memorable terms when he said, "One of our problems in looking at the future is that we tend to go through life looking through a rear-vision mirror." And it's awfully hard to drive down the road if your line of sight is constantly in the rear-vision mirror. You've got to look there every once in awhile; it's important, but you can't make it if you have that kind of orientation altogether. It seemed to me, as we listened to testimony from those who were feeling threatened, really, and quite defensive about the thought that possibly higher education would be given some kind of more than equal status by our proposal, there was the feeling that it was our intent that they should win and other people should lose, in this admittedly limited field of finance which we have in our state. All of us know we're a capital deficit area; we have to depend on outside capital. No institution in this state is financed adequately; none of them are endowed. That's just a fact of life. But our intent as a committee, and I think if you look at it and allow yourself to look at it in a fresh way, was to strengthen all aspects of education in the state, not to promote one at the expense of another. I think those who have seen the work of University Presidents and lobbyists in the past in the legislative halls will be pleasantly surprised in the future to find that this combined board will come in with something unified, if these amendments are stated in the way that I feel they are going to be stated, and it will have something very much a step ahead that will help all of us in all of our programs. I think that Mr. Heliker made a very beautiful statement. I won't attempt to repeat it. It seems to me that as we look ahead, we have to provide the kind of foundation that will allow for the kind of future we're going to be living in, and it's going to require more and more education. Whether you think about it in terms of orientation toward vocations or not, there will be more education demanded in the years to come as the explosion of knowledge goes on, as our society grows more and more complex. How do you provide for it? What do you do to make the best kind of opportunity available? I don't know that we've solved it; we feel we have taken a step or two that gets us out of some of the snafus of the past and may allow us to take a step or two forward. But it doesn't settle it for all time, and it does leave the people of this state and our Legislature much to do in implementing it. I think the specialization thing is the thing that's convinced me, and the clear delegation of authority. And so I feel that this proposal as we have it is a strong one for the guys who have to represent people in the outlying areas of our state. I think somehow you need to know that. Once I went out and got on a horse, and I didn't know what I was doing. But I was asked by Sterling Loney and Jules Atune one time to come watch them brand some cattle out in Sarpy, east of Hardin—and they were branding their own stuff, as far as I know; I think it was theirs. (Laughter) And they put me on that horse, and I was circling around a bunch of bulls who were pawing the ground and snorting and fighting the flies, and I'm glad the horse knew what he was doing, because I was scared to death, just riding in a circle. They didn't have any corral; you were just out in the open. You had to do this thing. But the guys who were doing the branding knew what they were doing. And those calves weren't all 2 weeks old; some of them were pretty husky. They seemed to know how to use the momentum of the calf himself to catch him and throw a knee into his ribs and lay him down with an ear-and-a-hindquarter grasp. They gave him a knee to the ribs, and down he went. They used his momentum. And all I'm saying is, in the time in which we're living, we've got to use the momentum of the time which we're a part of, and we've got to use the facilities and resources and skills which our society provides. And we've tried to do that. You guys understand that as well as we do. You use the best skills for your work that you can bring to it. We feel we've done that as a committee. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt, you had Mrs. Pemberton's attention for the first time today. (Laughter)

Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Martin, will you yield? I suppose I'd—

**DELEGATE MARTIN:** Yes, I'll yield. (Laughter)

**DELEGATE PEMBERTON:** Mr. Chairman. First, I'm flattered to have had your attention—(Laughter)—and I think Mr. Burkhardt is also flattered to have mine, after some of the things that have gone on between us. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman, I just want to take a minute to say that until Rick Champoux mentioned the letter and the material that was put on our desks yesterday, I didn't know about it and did—couldn't find it on this disheveled desk of mine. And my good seatmate here, Mrs. Mansfield, got it out for me. And I apologize, Rick.

**CHAIRMAN GRAYBILL:** Very well, are there other people that want to talk before we vote on these three proposals?

Mr. Blaylock, do you have a question?

**DELEGATE BLAYLOCK:** Yes. Mr. Champoux, will you yield to a question?

**DELEGATE CHAMPOUX:** I yield, Mr. Chairman.

**DELEGATE BLAYLOCK:** Rick, you, I think, would agree that what Mr. Burkhardt said a moment ago—that we are a capital deficit state; that we need money; that we're going to—there's always a struggle to get enough money. As I understand it, under your plan, with this two-board system, that when it comes to allocating the money, you're asking the Legislature for the money; that these two boards will come together and work out an agreement between the two boards as to how much money they're going to ask for. Now, if they are both championing their own cause—in one case the higher education; the other case the primary, secondary—what if those two boards cannot agree? Now what are you going to do?

**DELEGATE CHAMPOUX:** Well, if we can ever get these two boards through, we have an amendment—Mr. Harper has suggested it—a unified budget—and I believe Mr. Garlington, are you going to move?

**DELEGATE GARLINGTON:** (Inaudible)

**DELEGATE CHAMPOUX:** He's going to move that the Governor be the chief of the board. Is that correct?

**DELEGATE GARLINGTON:** (Nodding affirmatively)

**DELEGATE CHAMPOUX:** And I believe Mr. Scanlin down here has another one making the State Superintendent the chief of the board. So if we get to that point, we might be able to solve some of these things. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I certainly am not an expert in the field of either higher or lower education, but I do know what I want. I want the Legislature to have the purse strings, and I guess they have it under any of these three plans. Another thing I want is to have control of the budget finally in the Legislature, and as I understand it they will have it. Another thing that I want is a real, honest-to-goodness audit. Chairman Champoux of the committee indicated there would be an audit, but I don't like the idea of somebody auditing themselves. I don't think that's a satisfactory audit, and that's what it is. But Delegate Heliker indicated that there—he was going to offer—or somebody was going to offer another type of audit to the Legislative Audit, and I think that that is a splendid idea. And I was wondering if I may ask Chairman Champoux—if such an amendment is offered, if the committee will entertain it.

**DELEGATE CHAMPOUX:** Mr. President, may I reply?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** For the sake of the information of the assembly, Mr. President, could you read Mr. Heliker's proposed audit—amendment?

**CHAIRMAN GRAYBILL:** Mr. Heliker is going to have an amendment that says: "The Legislature shall be given an annual accounting of all the income and expenditures of each unit of the University System." In addition, the Chair would observe that the Legislative Auditor could still audit. Is there other comment?

Mr. Swanberg.

**DELEGATE SWANBERG:** I'll just be very brief, Mr. President. It just seems to me that with all the changes that are coming up in the field of education—this field of vo-tech, for instance—that I, for one, would want one single board to supervise it. I could see if there were two boards, the one board—the college board—might feel that some aspect of vo-tech should be under their jurisdiction and the other board might feel that some aspect of vo-tech should be under their jurisdiction, in spite of where it's assigned. And under this majority proposal there is no—any one person that makes these assignments. And I think in view of this, one board making all these decisions would be far to be preferred. That one board, of course, could divide itself up—there's 12 to 14 members—and one subcommittee could be on higher education, another subcommittee could be on vo-tech, and the third subcommittee could be on the elementary system. And for that reason I favor either of the minority reports.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I remember when Montana had a Chancellor. Then the Legislature, in its wisdom, refused to fund the Chancellor. They used to write in their appropriation, "There'll be no money expended for a Chancellor." The law stayed on the books. They didn't take it off. I saw some terrific fights. You think this is long. This is short one to what I saw in the Senate over a Chancellor fight. I don't think this is long at all on this. I think this is a very important discussion this afternoon, and I've enjoyed every minute of it. You people have stayed right on the line, and I think it's been marvelous. Now, I don't care what we do, it ain't going to work. (Laughter) I have seen the Chancellor then come back. They thought everything was going to be fine; now we got the Chancellor system. So we got a new Chancellor, and he couldn't last. So then we increased the size of the Board of Education. They did that. So don't worry, whatever we do—and we're going back to that thing. We're going to have an awful time with it. There's a few things that I would like to see. Now, I heard Mr. Champoux say over here, and I think in all honesty he said that the vo-tech would be under the Board of Education. Well, then I listened to the distinguished—or our distinguished member here from Silver Bow—saying that the vo-tech is being funded entirely by the state; it isn't costing anything. So now we get the money coming from the state, going to be under the Board of Education, and they're not funded by the state because this goes back to the other angle. Now, I—we're going to have to get some of these things straightened out as far as vo-tech is. Now, in going down here reading—and I'm not much of a reader—but in line 16 on page 6, it says down here, "a body corporate, which shall govern and control the academic, financial and administrative affairs of the University." Now, I hope if we can get to where—we're going to have to define what you mean by the word "financial". Are you guys, the body corporate, coming into this body—to the Legislature, and saying, "All we want is X-number of dollars. You give us X-number of dollars; we will spend it as we please." All six institutions—now, thank goodness, the vo-tech is out from there, because they'll have to get it someplace else. Now, if that means financial, I'd like to know that; if that's the way you're going to spend it. Now, I know having served on that Finance and Claims Committee—and I am sure that with Senator Groff or with Norris Nichols, through the appropriations—and I sets right down here—sets a former member of Appropriations Committee, Mr. Barnard, and a Chairman of it. I don't think you're ever going to get them to say, "so much money, and you divide it up". Now, you might say that they can do it, except that they will go and take out and says, "This is in the Constitution; this is not law. This is—you people don't have nothing to say about this." This is what bothers me. Now, when we vote on these two boards, I would like to see it go back to have one board. If we have it in the general plan, I'd like to see seven getting together once in awhile. I think Mr. Harper has a great idea. I hate to see these fellows meeting at the same time there. Now, I think another thing; we'd save a lot in administration. Now, I don't know whether you know this or not, but the Board of Institutions—their budget request last year, just for the Board of Institutions—not for the institutions—was $1,800,000 for the biennium. This was the request. Now, these are the things when we start creating two boards. I just saw Ed Nelson up here today, who's now the Board of Regents Manager, and I think is doing a mighty good job. We'll have another one. Now, I've watched this Capitol grounds grow around here, and I go down and I'm telling you, Ed's got a beautiful spot down here on—down on 11th Avenue, and we'll have some more. Now, this is what we must realize—and when we go to these. Now, if we have to go back to the majority plan, do you suppose we could put a little connecting link in there so they would have the same office and the same administrator and we could let them use the same stenographer and save a little money? This is the main thing I'd like to see, because somewhere, somehow, somebody has to pay the freight around here. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, my landlady stops feeding at 5:30, and in the last 10 workdays, I've missed 6 meals. When are you going to let me eat?

**CHAIRMAN GRAYBILL:** You'd better get a pair, Mr. Kelleher.
Mr. Champoux.

**DELEGATE CHAMPOUX:** May I answer very briefly, Mr. Mahoney? Charley, you're beautiful. He's great, isn't he? I think we ought to have an amendment to make him the Commissioner of Education of the state. However, vo-tech is funded in three ways. There are state funds, there are federal funds, and there are local funds. The other point that you were making concerning the Executive Secretary; I'm glad it was brought up, because Mr. Arbanas referred to who's going to be minding the store. Well, the store is being minded right now. They have an Executive Secretary, and he did refer to the gentleman. The building is already there. It's been in existence for I don't know how long. So actually, you're not—are you going to get rid of the building? Is this the thing? I mean, the building's there, so it isn't going to mean a matter—if I may just throw this—if I may answer you; the building is there. Going to sell the building, Charley?

**CHAIRMAN GRAYBILL:** Why did you have to end in a question, Mr. Champoux? (Laughter)
Mr. Mahoney.

**DELEGATE MAHONEY:** I might state, for the benefit of the assembly, this organization, the greater University, moved out of the Capitol building into a rented building last fall.

**CHAIRMAN GRAYBILL:** Mr. Driscoll, would you like to close, briefly?

**DELEGATE DRISCOLL:** Mr. Chairman, may I close? It's quarter after 5:00, and I have to get back to Butte, America, and I'd like to close. Thank you. (Laughter)

**CHAIRMAN GRAYBILL:** All right, the issue is on Mr. Driscoll's amendment. Mr. Driscoll's amendment is before you. It has the effect of calling for one Board of Education on which the Governor, Attorney General, and Superintendent of Public Instruction serve ex officio—

**UNIDENTIFIED DELEGATE:** Roll call.

**CHAIRMAN GRAYBILL:** —with 11 other members. We'll have a roll call vote. So many as shall be in favor of Mr. Driscoll's amendment, vote Aye; so many as are opposed, vote No.
Mr. Eskildsen, for what purpose do you rise?

**DELEGATE ESKILDSEN:** I rise because I don't think this is a fair way to take this vote. I think if we are going to vote on a one-body group, we should vote on—decide whether we want one body or we should decide whether we want two bodies. And then decide, if we take the one body, to take either Driscoll's or Gysler's. If we decide we want the two bodies, or the majority plan, fine.

**CHAIRMAN GRAYBILL:** All right, Mr. Eskildsen. I'm sorry; the Chair will have to rule you out of order. We are in the middle of a vote. This is the way they came in. This is the last amendment to Mr. Gysler's amendment. If, when we get all through, you aren't satisfied, you send another amendment to the Chair and I'll put your amendment. Has all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, we'll close the vote. Please take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Aye |
| Babcock | Excused |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Absent |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Excused |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Nay |

| | |
|---|---|
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 29 delegates have voted Aye, 66 have voted No.

**CHAIRMAN GRAYBILL:** 66 delegates having voted No and 29 Aye, the matter is defeated. Now, the next issue is Mr. Gysler's. Is there more discussion? Mr. Gysler, just a moment. Mr. Aasheim.

**DELEGATE AASHEIM:** Will Mr. Gysler yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Gysler?

**DELEGATE GYSLER:** Certainly.

**DELEGATE AASHEIM:** In your proposal, Mr. Gysler—or, Erv—"the general control and supervision of the State University and the various other state educational institutions"—what do you mean by "state educational institutions"?

**DELEGATE GYSLER:** Mr. Aasheim, this term is broad to cover what—hopefully, whatever the Legislature would provide for the duties there, as far as education goes. It's the same as in the old Constitution there, Mags.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Will he yield to another question, please?

**CHAIRMAN GRAYBILL:** Mr. Gysler?

**DELEGATE GYSLER:** Yes.

**DELEGATE AASHEIM:** What was your reason for making the State Superintendent of Public Instruction the executive officer of the board?

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Aasheim, our reason for doing that—and I gave Mr. Arbanas a very poor answer an hour or two ago—my reason for that was to make the State Superintendent of Public Instruction in charge of the housekeeping when the people go home, when the board goes home. In other words, making the State Superintendent of Public Instruction the number one there.

**DELEGATE AASHEIM:** Thank you. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I sort of, as I intimated when I spoke formerly—that I tend to favor this amendment or suggestion of Mr. Gysler's, but I think it needs, probably, a little working over. I think it should be mentioned—the fact that we are also including public schools here, rather than educational institutions. And I also question here the matter of making the State Superintendent the Executive Officer, as a senior officer above the Governor. I do like the idea of having one board, as I said, and having 12 members and dividing the membership into three different areas. But I think, like Mr. Eskildsen, that we probably have here, maybe, a Hobson's choice. And I would hesitate to adopt this Gysler proposal, even if I do like it, with the wording as it is now; and right now, I'm not ready to make any amendments to make it really workable. I really am not conversant with the problems that would be involved. However, as I said before, I do like this idea of a single board.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** May I inquire of the Chair, please? If this were to pass, it could be amended afterwards, and really, the choice we have is between the—now is between a plan with one and a plan with two; and once we adopt the plan, we can amend, can't we?

**CHAIRMAN GRAYBILL:** That's right. Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman, I'll be short in closing. What I'm trying to do—and I think I should say to Mr. Eskildsen: right now, I believe, is the time when you choose between one board and two boards. The thing that I want to primarily do is to make everything one board with enough people so that they can get the job done and so that we don't have two separate boards and then the two boards come together and fight. If there's going to be some fighting, let's get it done right inside of the board that meets, and every time a board meets, this board will meet. I take issue a little bit with Mr. Heliker's statement that the University System must be number one over all, because if the University System is number one over all and we let other phases of our educational system go to pot, then we won't have anyone qualified to go to the University System. Mr. Mahoney, as far as the things are concerned—everything is—your doubts—I feel that my plan basically takes care of them. Mr. Champoux, a long time ago, said that the board proposed by me was too large, but yet at the same time he says his board should get together and meet, and there's 14 plus 1, which makes a board of 15. With that, I will close.

**CHAIRMAN GRAYBILL:** We're going to have a roll call vote.

Is that what you want, Mr. Kamhoot? For what purpose do you rise?

**DELEGATE KAMHOOT:** Mr. Chairman, I rise for the purpose of explaining my vote. Delegate Kelleher has gone. He was going to vote against the amendment, and I want to vote for the amendment, but I'll not punch the button. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Very well, we'll have a roll call vote. The issue is on Mr. Gysler's proposal for substituting his Section 9 for Sections 9, 10 and 11 in the committee report. His section calls for one Board of Education on which the Governor and Attorney General serve ex officio and the State Superintendent of Public Instruction as Executive Officer of the board. So many as shall be in favor of that motion, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Excused |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Absent |
| Delaney | Absent |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Excused |
| Garlington | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Absent |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |

| | |
|---|---|
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Excused |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 38 delegates voting Aye, 54 voting No.

**CHAIRMAN GRAYBILL:** 54 delegates having voted No and 34 having vote—38 having voted Aye, the amendment fails. Will the Chair please have the pages put these out. There's about 20 copies, 2 to a row.

Mr. Harper, you're the first up on amendments to Section 9. May we read yours, Mr. Harper?

**DELEGATE HARPER:** Please.

**CHAIRMAN GRAYBILL:** All right, the pages put out about two in each row. This is an amendment that has some text to it, and we did not have any printing. I made about 20 copies so you can look at them. Will the clerk please read Mr. Harper's amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 9, page 6, line 1, of the Education and Public Lands Committee proposal, by adding a sentence, following the period after the word 'concern'—quote: 'The State Board of Education shall determine budget requests to be made of the Legislature, after forming a plan for allocating funds to all phases of the state's educational programs.' Signed: Harper."

**CHAIRMAN GRAYBILL:** Very well, you're going to have that before you in a moment. The amendment goes in on page 6, line 1—page 6, line 1, after the word "concern" in the middle of the first line. It says—I'll read it again: "The State Board of Education"—that's the combined board—"shall determine budget requests to be made of the Legislature—comma—after forming a plan for allocating funds to all phases of the state's educational program." "The State Board of Education shall determine budget requests to be made of the Legislature, after forming a plan for allocating funds to all phases of the state's educational program."

Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, this is just in the nature of getting to work now to see if we can put into our so-called two-board proposal some of the things that people who wanted the one-board proposal were concerned about. And the thing I heard mentioned several times was the matter of making sure that budget allocations were looked at in the light of total educational program of the state, rather than in two segments, then coming to the Legislature in a sense in the nature of a dogfight between two conflicting elements. And since we have, under this plan, a State Board of Education set up, combining the efforts of the two sections, I offer this amendment. It does a perfectly obvious thing: it suggests that the State Board of Education will make a budget request to the Legislature. And, of course, in order to do that, they have to decide among themselves how they will allocate a total amount of fund that they expect to get from the Legislature. I hold no particular brief for the wording of this, but I think the idea is perfectly obvious.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I'm in support of that amendment.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** We still don't have copies.

**CHAIRMAN GRAYBILL:** All right, will someone in Mr. Romney's area get him a copy, and I'll also read it again slowly. "The State Board of Education shall determine budget requests"—now, that's by the State Board of Education they mean—Section 9; that's the combined boards—"shall determine budget requests to be made of the

Legislature, after forming a plan for allocating funds to all phases of the state's educational program."

Mr. Woodmansey.

**DELEGATE WOODMANSEY:** It appears to me that, in this case, I wouldn't particularly like to be the Superintendent of Public Instruction, because each board of seven members will be there to defend the request from their area and it will be up to the Superintendent to break the tie. And whichever way the Superintendent goes, it will be the wrong way, it appears to me. I don't know how we can alleviate this, but it looks like the Superintendent is going to get caught in the middle right from the start.

**CHAIRMAN GRAYBILL:** So that you—

**DELEGATE WOODMANSEY:** Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** I think the body should have in mind these two other amendments. Mr. Garlington's amendment would substitute the Governor for the Superintendent of Public Instruction, so that the Governor would make the decision Mr. Woodmansey just discussed. Mr. Scanlin's amendment would leave the decision with the Superintendent of Public Instruction, but would require that the board meet at least quarterly to give attention to the unified budget, and the Superintendent would be Chairman.

Mr. Rollins.

**DELEGATE ROLLINS:** Mr. Chairman, I think it's quite conceivable that a board—the two boards might be able to agree without necessarily a deadlock each time. You're assuming—someone's assuming that there will be seven on one board, dedicated solely to getting as much money for their segment as possible, and matched by seven on another board. It might possibly be that there are men and women with an intense desire to compromise and work out these matters for the good of all.

**CHAIRMAN GRAYBILL:** The Chair would like to observe, for the benefit of the body, that both the Board of Public Education and the Board of Regents have seven public members, plus the Governor and the Superintendent. Now, I realize they have no votes in either case, but in other words, there are other people on those boards.

Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman, will Mr. Harper yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Harper?

**DELEGATE HARPER:** Yes.

**DELEGATE CONOVER:** Mr. Harper, is it your intention that your—what you're getting at is at the vo-tech schools? You know, at the present time, that the financing of our public schools is already administrated through the State Superintendent by the taxes and the foundation program. Now, just who are you relating this Board of Education—is it strictly to the vo-tech schools?

**DELEGATE HARPER:** I'm not sure I understand that question, Mr. Conover. My answer would be that the Legislature appropriates the funds for all of these now and will according to this plan, too. My concern was that the Legislature—the Committee, in the Legislature, on Finance—not be faced with asking from the vocational people and maybe in—as a part of that from different vocational units—not be faced by asking from various units of the University System, and so forth. But that the Board of Education would be the place—the State Board of Education would be the place where all of these things were threshed out together, so that when the Legislature was asked for an amount, there would have been some agreement reached between the vocational-tech people, the community college people, the university people, the—all phases of education.

**CHAIRMAN GRAYBILL:** Very well.

Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, would Mr. Harper yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Harper?

**DELEGATE HARPER:** Yes.

**DELEGATE NUTTING:** When we look at it realistically, though, we know what is going to happen is that the budget request is going to far exceed the amount of funds available. Is it your anticipation that this amendment will mean that the funds will be voted by the Legislature and then it will be up to this board to again decide where the cuts come—whether they'll come from the University or the elementary or the vo-tech, or where they'll come from?

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** I can see two possibilities here. The Legislature would decide which of these two it wanted to do. It may not do always the same way. The Legislature need not come back with that kind of an appropriation and say to this board, "We leave it up to you to apportion it out." They may, having the asking from the board in their hands, simply make the allocation any way they want. On the other hand, there may be points at which—or times at which the Legislature might well say, "We have this much money—we will allocate this much of a fund to the Board of Regents of the University System; we'll allocate this much for another segment of it—and leave it up to the board to decide." I wouldn't want to try to second-guess the Legislature on that, but I don't think there's anything implicit in this motion that tells about how the funds have to be handled after the Legislature has allocated them.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Harper—may I direct a question to Mr. Harper?

**CHAIRMAN GRAYBILL:** Mr. Harper?

**DELEGATE HARPER:** Yes.

**DELEGATE ROMNEY:** Maybe a couple.

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE ROMNEY:** George, in line 17, Section 11, the financial power is given, at least to a degree, to the board, so if the Legislature—if the board comes up with a budget and the Legislature doesn't have enough money to fund it and cuts it in part—like you said, maybe one place or another—then does the Board of Regents lose its power to allocate?

**DELEGATE HARPER:** Mr. Chairman. Mr. Romney, let's start with this. It's for sure that the—this Board of Regents is not going to be able to allocate any more money than the Legislature gives it. So if an asking comes in from the State Board of Education and then the Legislature appropriates only a portion of it, then obviously all of the original allocations can't be made. I was suggesting that—I suppose that if this Section 11 is passed without further amendment, that what you are suggesting would be true. The money appropriated for this area of higher education would be given to the Board of Regents, and then they would make the allocation.

**DELEGATE ROMNEY:** Mr. Harper, then it's a matter of who's going to divide the pie for the record, and that's what I was trying to bring out.

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** There may be other amendments that need to be added in other sections here to answer this question of Mr. Romney—and that—they're probably in the minds of other people. I simply am trying, in this one amendment, to make clear the duty of the State Board of Education to correlate this business of financial askings to the Legislature.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** I have a question, I think, for Mr. Harper. I don't know that I understand just how this budget is going to be sent to the Legislature. Do I understand, then, that it will bypass the Administration Department or the Budget Department completely, and the budget will go directly to the Legislature? Would that be it? That would be a difference from the past.

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** I must confess ignorance at that point. If the request is not made directly to the Legislature, if there are other channels through which it ought more properly to go, and if this does not afford the right channels, then I would be open to an amendment. I'm not posing as an expert in financial affairs. I'm just trying to make clear—at least give the basis for making clear here something that I think we'd all like to get at.

**DELEGATE RYGG:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** This does cause me some concern. I'm not an expert on it either, but I have been on the Appropriations Committee a few times, and it would appear to me, by this amendment, that we are completely bypassing all other parts of the Administration Department. And if this is a body corporate, am I to assume, then, that that is it; that the—any other part of the Administrative Department is bypassed and this corporate body gets its one budget directly to the Legislature? That's the way this would read to me, and I don't know if that's the proper mechanics or not. I don't know what difficulty it would make, but I think it would be a definite change from the present. Now, maybe that's the way it is supposed to be if this is a body corporate—and apparently is going to bypass all the Administration Departments or anything, and it's going direct to the Legislature. Mr. Chairman, could I ask Mr. Champoux a question?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I'll yield.

**DELEGATE RYGG:** Is that the way it would be then, Mr. Champoux?

**DELEGATE CHAMPOUX:** Sterling, if you look at the examples in all other states, the procedure is to go through the executive Budgetary Department. And I would assume—we could specify here—but I would assume—I think what we want to do is to go through the regular channels as they go through presently, which you have described. Do you think we should dress it up here with some more specific words, or—

**DELEGATE RYGG:** Well, the way it's worded, I certainly don't think it would go through the channels it goes through now.

**DELEGATE CHAMPOUX:** What do you suggest then? When you make a—May I, sir? May I?

**CHAIRMAN GRAYBILL:** Mr. Rygg, you have the floor.

**DELEGATE RYGG:** Well, I don't know that I'm prepared to make that amendment in there unless you'd—I don't know if this is right—you'd say that—to the Legislature through the regular channels, perhaps, would get it down to where I think it ought to be.

**CHAIRMAN GRAYBILL:** Now, may I have your attention. The Chair would like to tell you that I would like to finish Section 9 only tonight. There are four amendments on Section 11. If it's not possible to finish Section 9 tonight, maybe we won't, but I would like to try to finish Section 9 tonight. We have three proposed amendments—this one on budgeting; one on whether to have the Governor or the Superintendent as the chief officer of Section—of the board; and the third one as to whether or not to have them consider the budget annually or quarterly. Those don't seem to be too difficult, and I'd like you to try and work them out. Now, I don't know—I think this is an interesting point that has been raised.

And Mr. Leuthold, although you were up, I see that Mr. Davis, who is an attorney and has been on the Education Board, is here. I wonder if he can shed light on this problem. I'll come back to you, Mr. Leuthold.

**DELEGATE DAVIS:** I think we can shed light on it by just unshedding the third line, "to be made of the Legislature", and make it read: "The State Board of Education shall determine all budget requests, after forming a plan for allocating funds to all phases of the state's educational program." Then it'll just go through regular channels. I would move to amend the motion of Dr. Harper's by striking "to be made of the Legislature".

**CHAIRMAN GRAYBILL:** Very well, Mr. Davis makes a motion that we strike out the words "to be made of the Legislature", so that the sense of the Harper amendment is that the State Board of Education is to determine budget requests after forming a plan for allocating them to the state's educational program, the assumption being that that would leave them to run through the normal budgeting process.

Mr. Leuthold.

**DELEGATE LEUTHOLD:** Mr. President. I'd like to help out here, and my suggestion is that we don't need any of these amendments; that in the—Section 1 we have given the responsibility to the Legislature to provide for education, and if they're going to provide for education, they're going to have to provide the money. I think everything is taken care of in Section 1, and I don't think we need any of these amendments.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** I would have to speak against that. I think what we're trying to do here, Mr. Leuthold, is to try to keep everyone from coming in directly to the Legislature with their own budget—each one of the units of the University System and the community colleges and vo-tech. And this—in other words, they come up with a unified plan of all the educational expenditures and work that out in their boards and then present it. We do give authority to the Legislature to fund it all, but rather than have them have to hassle at all, at the outset anyway.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** May I simply accept Mr. Davis' amendment and strike that from my amendment, rather than to take the time to—

**CHAIRMAN GRAYBILL:** Well, we've debated yours far enough. I'm going to have to put it, but you may certainly say that you'll accept it.
Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I know that Brother Harper and I are trying to head in the same direction, and would it expedite things if I submitted mine as a substitute motion at this time?

**CHAIRMAN GRAYBILL:** Your motion doesn't go to the issue of the budget that I can see, does it?

**DELEGATE SCANLIN:** It sure does, in about three words—about two paragraphs less than Brother Harper's.

**CHAIRMAN GRAYBILL:** Just a minute. Let me read it. Very well, I'll allow you to make it as a substitute to Mr. Harper's. Wait a minute, now. I'll allow you to make it as a substitute motion; and if it prevails, fine; and if it doesn't, we're back on the Davis-Harper problem. Mr. Scanlin's motion may be read by the clerk.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 9, page 5, line 30, of the Educational proposal by striking the following words, starting on line 30—quote: 'periodically on matters of mutual concern. In case of a tie vote at such meeting, the Superintendent of Public Instruction may cast a vote'—end quote; and insert in lieu thereof the following words—quote: 'at least quarterly—comma—giving primary attention to a unified budget, period'. 'The Superintendent of Public Instruction shall be Chairman period'—end of quote."

**CHAIRMAN GRAYBILL:** Mr. Clerk, may I have it? Very well, Mr. Scanlin has offered a substitute motion, the effect of which is to put—is to strike out everything after the word "meet". Strike out "periodically" on the bottom of page 5 and the rest of the sentence on page 6, and substitute these words so that the sentence reads: "The Board of Public Education and the Board of Regents of Higher Education, as hereinafter designated, shall together constitute the State Board of Education, which shall meet at least quarterly, giving primary attention to a unified budget. The Superintendent of Public Instruction shall be Chairman." The point is that it simply says that this board shall meet at least quarterly, giving primary attention to a unified budget, and it makes the Superintendent of Public Instruction Chairman.
Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, it seems to me the scare-word was "periodically". It weakened the whole proposal. The strength of these three sections is in Section 9. There you have your one board that everybody wants. I feel that the amendment that I offered would answer several of the very important objections that have been raised. First, it would fix the responsibility for a unified budget; second, it would solve the place of vo-tech by implication, as the—Chairman Champoux has indicated; third, it would give an elected official, the Superintendent of Public Instruction, a very definite position of control; and, finally, it would make the position of Superintendent of Public Instruction less attractive for unqualified political candidates. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there any discussion?
Mr. Rygg.

**DELEGATE RYGG:** Well, Mr. Chairman, I—this bothers me a little bit, too, because normally, the way it is now, the budget is made out on a 2-year basis. And I assume from what we're heading for, it'll be an annual basis; but I really don't see how you could have a budget each quarter. And this would specifically say they'd have to meet quarterly on a unified budget, and I rather think that it should have to be on an annual basis to establish a budget. So I would wonder why they should meet quarterly for that particular reason.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I think we have to realize there's still a little protocol in the United States, and I would hate to see the Superintendent of Public Instruction presiding over a board that the Governor is ex officio member of. Now, we either let the Governor off entirely, or put him on as Chairman of that board. I think that he's the man—he's the Chief Executive, and I would hate to see him have to go in and sit down on that board as to be—I understand Mr. Garlington has an amendment something along this line—I don't know, but it was mentioned—but, please, don't put the Superintendent presiding over the board and the Governor ex officio, sitting there and can't even vote. With the highest-priced man we've got, I think—

**CHAIRMAN GRAYBILL:** Is there other discussion?

Mr. Scanlin, do you need to close?

**DELEGATE SCANLIN:** I'd like to clarify the concern of Delegate Rygg. The matter of meeting quarterly was not limited to a discussion of the unified budget, but the budget would be of primary concern in the difficulty that we face here. But it would not be limited simply to—the joint meeting of the two boards as the State Board of Education would not necessarily be limited just to financial matters. I would hope not. Mr. Chairman, I don't see where the Governor is mentioned specifically in Section 9, but I can see where Mr.—Delegate Mahoney would bring the Governor in in both Sections 10 and 11. I recognize that objection.

**CHAIRMAN GRAYBILL:** Very well, the Chair would observe that if it passes, it can be amended; but if it doesn't pass, we won't worry about it. So many as are in favor of Mr. Scanlin's motion, which would have the effect of adding this language—the section would then read: "The Board of Public Education and the Board of Regents of Higher Education, as hereinafter designated, shall together constitute the State Board of Education, which shall meet at least quarterly, giving primary attention to a unified budget. The Superintendent of Public Instruction shall be Chairman." So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and it's defeated. Very well, we're back on Mr. Davis' amendment to Mr. Harper's amendment. Mr. Davis' amendment was to strike out the center line, the third line, of Mr. Harper's motion so that Mr. Harper's motion would read: "The State Board of Education shall determine budget requests after forming a plan for allocating funds," et cetera. It leaves off "to be made of the State Legislature"—"budget requests of the State Legislature."

Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, is a substitute motion in order?

**CHAIRMAN GRAYBILL:** Well, I'll hear it and see what its feature is.

**DELEGATE NUTTING:** I would move to strike the—everything after the word "shall", so that the—and add the following words, so that the sentence would then read: "The State Board of Education shall submit unified budget requests." The last sentence worries me about a plan for allocating funds, and I think this would get around the fact that the budget plans would be submitted—unified budget requests would be submitted. And it would also take the—everybody off the hook as far as where they are to be submitted, because they are—if our different—if we change procedures, they could be submitted wherever they would be necessary.

**CHAIRMAN GRAYBILL:** Do I understand it to be the sense of your motion that Mr. Harper's motion would then read: "The State Board of Education shall submit unified budget requests"—is that what you're saying, Mr. Nutting?

**DELEGATE NUTTING:** (Inaudible)

**CHAIRMAN GRAYBILL:** And you're making that as a substitute motion?

**DELEGATE NUTTING:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well, the issue now will be on Mr. Nutting's substitute motion, which would have the effect of adding to Section 9 the following language: "The State Board of Education shall submit unified budget requests." Is there discussion?

Mr. Rygg.

**DELEGATE RYGG:** I think this would be much better than the original motion. I think it would relieve me of my worries anyway. I think they would go through in the regular channels, and I would support this substitute motion.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I have no pride of authorship. I think Nutting, as usual, has said in four or five words what it takes a preacher a paragraph to say. (Laughter)

**CHAIRMAN GRAYBILL:** Very well, the issue will be on Mr. Nutting's substitute motion. It will have the effect of adding a sentence that says: "The State Board of Education shall submit unified budget requests." So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as shall be opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. And the sentence will be added on page 6, line 1, after the word "concerned", where Mr. Harper suggested. "The State Board of Education shall submit unified budget requests." That's adopted, assuming that we adopt the section. (Laughter) Now, we've taken care of Mr. Scanlin. Mr. Garlington, you're next. May we read yours? Mr. Garlington's is very simple. I'll read it. It says: "substitute 'Governor' for 'Superintendent of Public Instruction' in the last sentence, so that the Governor casts the tie vote." In other words, in the case of a tie vote at such a meeting, the Governor may cast a vote. You see, otherwise the Governor and the Superintendent have no vote.

Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, my problem in connection with this, and the reason for the suggested amendment, is to remove what seems to me to be an implied conflict of interest on the part of the Superintendent of Public Instruction. I think it would be wrong to put that officer in that position. By tradition and history and common consent of all concerned, the Superintendent's primary function is in the field of elementary and secondary education. There are two boards of equal size and dignity here, and to put a person who is primarily associated with one board in the position of judging between the two if a deadlock should occur would create the very sensitive situation that Mr. Woodmansey referred to. Now, if you search around for some way to resolve this, the name of the Governor emerges as the most likely solution. He doesn't have any conflict between the one board or the other, because he appoints them both. And we're all citizens in the state together, and we're all concerned with education together. And since the Governor is elected by all hands and represents all hands and also is ex officio on both boards, so that he should have adequate information for casting a vote, he seems to make the most logical choice for being the one to break a tie if it should occur. I agree with Mr. Rollins that it would seem improbable that this would often occur, but the very fact that there is this means of resolving it, I think is healthy in avoiding the situation in any event.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Davis.

**DELEGATE DAVIS:** (Inaudible)—member of the board—of the Committee on Education, I think this would be a very good idea to relieve the Superintendent of being placed in this untenable situation.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, I—the Governor has the responsibility to submit a budget to the Legislature, and I think that this is one thing we don't ever want to take away from him. We want that budget submitted to the Legislature by the Governor. He is a budget officer. He is all of this. Now, I just question, if he's got a board there that all he sits there in case of a tie—I would much rather see him the boss man of this board and say, "Now, you're going to submit this or I'm going to know the reason why." I don't like to relieve him of a responsibility in education. Let's get him right out there—this is—make it part of his responsibility. I hate to think of a Governor having to walk in and says, "Well, I can sit here, but I can't vote." Now, we don't do that with the President of the Convention. We don't do that in anything else—that we tell him he can be—sit around here, but he can't vote. Well, I think the time has come to go out here and make him a voting man of this board all the way through, the way we've had it. And he can—they've done it in the past, and I see nothing wrong, and I'd hate to have him just vote in case of a tie.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** I would support Mr. Garlington's proposal. I think the Governor ducks in and out of these meetings and he's there from time to time, but he doesn't carry the major brunt of it. And I think when something critical is coming up, he'll be there—if there is a tie, he'll be on hand; and I would support his motion.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Garlington's amendment to substitute the word "Governor" for "Superintendent of Public Instruction", so that the last sentence of Section 9 reads: "In the case of a tie vote at such a meeting, the Governor may cast a vote." So many as are in favor of Mr. Garlington's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted. Very well, we now have Section 9 reading as follows: "The Board of Public Education and the Board of Regents of Higher Education, as hereinafter designated, shall together constitute the State Board of Education, which shall meet periodically on matters of mutual concern. The State Board of Education shall submit unified budget requests. In the case of a tie vote at such a meeting, the Governor may cast a vote." The Chair has no more amendments before it. Do you want to move it again, Mr. Champoux, or do you want me to?

**DELEGATE CHAMPOUX:** After 4 hours, I would like to have the pleasure of moving this for a vote, please.

**CHAIRMAN GRAYBILL:** Please. Well, you want me to do it, though? Very well, members of the body, you have before you for your—on your consideration and on the record—for your consideration and on the recommendation of Mr. Champoux that when this body arises and reports, after having had under consideration Section 9, as amended, that we recommend the same be adopted.

**DELEGATE CHAMPOUX:** Roll call.

**CHAIRMAN GRAYBILL:** Roll call. So many as shall be in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as opposed, vote No on the voting machines. Roll call has been called for. So many as are in favor, vote Aye; so many as are opposed, vote No. We are voting on Section 9 only, State Board of Education. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Excused |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Absent |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Excused |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Aye |

| | |
|---|---|
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Absent |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Excused |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 74 delegates voting Aye, 13 voting No.

**CHAIRMAN GRAYBILL:** 74 delegates having voted Aye and 13 delegates having voted No, Section 9 is adopted as amended.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I move the Committee of the Whole rise and report progress and beg leave to sit again.

**CHAIRMAN GRAYBILL:** The motion is that the Committee of the Whole rise and report progress and beg leave to sit again. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** All opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** Very well, we'll do that. If you'll sit around a minute, we'll have it done for you.

(Proceedings moved from Committee of the Whole to Convention, President Graybill presiding)

**PRESIDENT GRAYBILL:** Will the clerk please read the report of the Committee of the Whole.

**CLERK HANSON:** "March 11, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 10 of the Committee on Education, recommend as follows: that the committee rise and report progress and beg leave to sit again. Signed: Leo Graybill, Chairman."

**PRESIDENT GRAYBILL:** Are there—does anyone want the Committee of the Whole report read in full?

**UNIDENTIFIED DELEGATE:** Yes. (Laughter)

**PRESIDENT GRAYBILL:** You want to stand up and say that? (Laughter)

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move the adoption of the Committee of the Whole report.

**PRESIDENT GRAYBILL:** It's been moved that we adopt the Committee of the Whole report. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** Very well.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Pursuant to the general powers vested in Montana Constitutional Convention, in accordance with the provisions of Section 7(6) of the Enabling Act, Chapter 296, Laws of 1971, the Montana Constitutional Convention shall recess temporarily until 9:00 a.m. on Monday, March 13, 1972.

**PRESIDENT GRAYBILL:** Now, the Chair would like to point out that we are going to meet Monday at 9:00, and there has been some notes sent up to me that you want to think about and do some draftsmanship. Please think about it before 9 o'clock Monday morning if you want to change Section 10 and 11. All those in favor of the motion, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** So ordered. Thank you.

(Convention recessed at 6:05 p.m.)

**March 13, 1972**
**9:10 a.m.**

**Forty-Fourth Day**

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** The Convention will come to order. If you'll all stand, Don Belcher will lead us in the Pledge of Allegiance this morning.

**DELEGATES WITH DELEGATE BELCHER:** I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**PRESIDENT GRAYBILL:** And if you'll remain standing, Don Scanlin will lead us in an invocation.

**DELEGATE SCANLIN:** Let us pray. Oh Lord, Thou hast given to us the responsibility for saying yes or no, aye or nay, green or red. Suffer us not too many mistaken, snap judgments made in the heat of the day. Let us rely more on Thee for insight and decision and not alone on the words and wisdom of men. Only thus may we truly fulfill the obligation placed upon us in our Master's name. Amen.

**PRESIDENT GRAYBILL:** We'll take roll by voting Aye on the voting machines.

**CLERK HANSON:** Mr. President, may Delegates Kamhoot, Davis and Artz be excused please?

**PRESIDENT GRAYBILL:** Yes.

**CLERK HANSON:** Delegate Choate, Delegate Dahood, Delegate Drum, Delegate Eck, Delegate Holland, Delegate Jacobsen, Delegate James, Delegate Johnson, Delegate Kelleher, Delegate Pemberton, Delegate Dahood, Delegate Drum, Delegate Holland, Delegate Kelleher, Delegate James, Delegate Pemberton.

**PRESIDENT GRAYBILL:** Very well. Take the attendance. Delegate Davis' and Delegate Kamhoot's presence is noted, and they may leave when they need to today.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Excused |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Absent |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Absent |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Absent |
| Jacobsen | Present |
| James | Absent |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Absent |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |

| | |
|---|---|
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Absent |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

**CLERK HANSON:** Mr. President, 93 delegates present, 1 excused, 6 absent.

**PRESIDENT GRAYBILL:** Very well. A quorum is present. Order of Business Number 1, Introduction.

**CLERK HANSON:** "Mr. President. We, the Committee on Style, Drafting, Transition and Submission transmits revisions of Report Number 8 of the Committee on Bill of Rights. John M. Schiltz, Chairman; William A. Burkhardt, Vice-Chairman." Mr. President.

**PRESIDENT GRAYBILL:** Very well. The Bill of Rights Style and Drafting Report is accepted and placed on General Orders. Order of Business Number 2.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 3, Communications. This morning, I would merely like to spend 1 minute with you considering where we stand. I think if we can complete debate this week, we will be in good shape. Now, when we complete debate, we're not quite through. By that I don't mean complete all the Style and Drafting and all the ballot debate; I mean the debate on the 10 articles. And if we can do that, we'll be in pretty good shape. To do that, we're going to have to work fairly hard this week, because, as you know, we still have Public Health, Local Government and part of General Government left to go after we finish Education. I am hopeful that we can finish Education either by noon or by early afternoon so that we can take Judicial, Natural Resources and Revenue's Style and Drafting today. From now on, we have to work very carefully with Style and Drafting, because we need their full time available so that they can keep up and catch up. It's either feast or famine with their committee. If we do these things, however, and are able to complete these major articles by Saturday, I think we will have no trouble financially. Mrs. Pemberton, your presence is noted. Very well. Mr. James, your presence is noted. Order of Business Number 4, Introduction and Reference.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 5, Final Consideration.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 6, Adoption.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 7, Motions and Resolutions.

**CLERK HANSON:** "Montana Consti—"

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. President, the clerk has a resolution from the Rules Committee. I might ask that he read it at this time.

**PRESIDENT GRAYBILL:** Very well.

**CLERK HANSON:** "Montana Constitutional Convention, 1971-72, Resolution Number 12. Introduced March 13, 1972. A resolution requesting a fiscal note. Whereas the Convention has recommended constitutional change which might cause Montanans more tax dollars; and Whereas the extent of such possible expenses is a matter of considerable interest and should be determined for delegate information to the extent possible. Now, therefore, be it resolved by the Constitutional Convention of the State of Montana that this Convention request that the Revenue Department prepare a fiscal note forecasting the amount of expenditures for the extra services, if any, provided in the proposed Constitution. Introduced by Committee on Rules and Resolutions. Marshall Murray, Chairman."

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. President. By way of explanation, although I don't think that much explanation is necessary, this is in compliance with the request of Delegate Rygg last week who asked—who, under this order of business, moved that a fiscal note be requested from the Revenue Department. Rather than handle the manner [matter] in the fashion of having Delegate Rygg prepare and introduce the resolution, the Rules Committee has done so. We have met on the matter and, without objection—in other words, by unanimous vote—we agree that this would be a most valuable thing to all of the delegates at this Convention and to the public at large, and therefore we have prepared this resolution and introduced it, requesting that the Convention ask the Revenue Department of the State of Montana to prepare a fiscal note to the best of their ability to forecast the amount of expenditures, if any, that might be forthcoming from our proposed Constitution. And at this time, I would move that the resolution be adopted.

**PRESIDENT GRAYBILL:** Very well. Is there discussion? All in favor of adopting the resolution asking the Revenue Department for a fiscal note on the amount of expenditures for extra services, if any, provided by the proposed Constitution, please say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** The Ayes have it, and so ordered. Are there other resolutions or motions?

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Order of Business Number 8, Unfinished Business.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 9, Special Orders.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 10.
Mr. Murray.

**DELEGATE MURRAY:** Mr. President. I move that the Convention resolve itself into the Committee of the Whole for consideration of business under General Orders.

**PRESIDENT GRAYBILL:** The motion is to resolve this Convention into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** So ordered.

(Committee of the Whole)

**CHAIRMAN GRAYBILL:** Mr. Clerk.

**CLERK HANSON:** Style and Drafting Committee Proposal Number 6, Natural Resources, having been duplicated and placed on the delegates' desks on the 10th day of March, 1972, at 9 o'clock a.m., is now in compliance with Rule Number 23 of the Montana Constitutional Convention Rules. Style and Drafting Committee Proposal Number 7, Revenue, having been duplicated and placed on the delegates' desks on the 11th day of March, 1972, at 9 o'clock a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules. March 13, 1972. The following committee proposals are now on General Orders: Education; Public Health; Local Government; Style Number 5, Judiciary; Style Number 6, Natural Resources; Style Number 7, Revenue; and Style Number 8, Bill of Rights." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman. By way of rearranging the calendar and in accordance with your earlier remarks this morning, I move that the committee take up the matters under the Education proposal at this time and pass consideration of the matters from the Style and Drafting Committee which are on General Orders before the Committee of the Whole until the next sitting of the committee.

**CHAIRMAN GRAYBILL:** Very well. The motion is to pass Style and Drafting reports on Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered. Very well. Mr. Kelleher, your presence may be noted. Ladies and gentlemen of the committee, when we finished on Saturday, we had discussed 9, 10 and 11 and we had finally adopted Section 9 as amended. Now, we have about five or six amendments to Section 11 before me, and we have a couple of proposals to amend 9, 10 and 11 again. And I have pointed out to the proponents of these that this would require reconsideration of Section 9. I'm not against doing that, but I always have asked that we consider reconsiderations at the end of the article so that we don't get to reconsidering too quickly. Therefore, I have suggested that the persons who want to reconsider 9 and think that it's tied into 10 and 11—if they care to rise and explain their motions now, I—we will listen to their explanation, but we will proceed, as soon as that has happened, on Section 10.

Mrs. Bates, do you want to do that?

**DELEGATE BATES:** Yes, Mr. Chairman; thank you. I would recommend, when we do and if we should reconsider to reconsider, that we would delete Sections 9, 10 and 11 for one paragraph only, which would state: "The general control and supervision of the State University and the various other state educational institutions shall be vested in the Superintendent of Schools and one or more State Boards of Education whose powers and duties shall be prescribed and regulated by law." And this, I feel, would solve many of the problems that we would face by having two boards or tying anything down in the Constitution. And this would permit the Legislature to control it.

**CHAIRMAN GRAYBILL:** Mr. Harper, for what purpose do you rise?

**DELEGATE HARPER:** To answer your request that suggestions for number—changes for Number 9 be explained.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE HARPER:** This suggestion will be coming before us also—that, really, we make Sections 9, 10 and 11 all Section 9 with three subsections—1, 2 and 3—and that, in effect, we would write a little bit more into what is the present Section 9. Since we now have stated "the State Board of Education, comprised of these two other boards"—the Board of Public Education and the Board of Regents of Higher Education—and since we have already said they would be charged with the business of presenting a unified budget, which implies that they would have to give some consideration to overall policy and general administration planning, a sentence like this might be written in—this is under Section—what is now Section 9: "It shall be responsible for a long-range planning and evaluation of policies, programs and administration for the state's educational systems." And then follow up with: "It shall submit unified budget requests." And then to suggest when we get down into 10—what is now presently 10 and 11—that, in the Board of Regents section, that instead of saying "an Executive Officer and prescribe his terms and duties", a suggestion that we call this person a "Commissioner of Higher Education", and they could prescribe his duties. And then suggest, in Section 9, that this person, along with the Governor and State Superintendent, also be a member of the Board of Public Education—a nonvoting member—and also in Section 11. So that you would have some person who'd be minding the store, as we've been saying, with definite responsibility set in there. But the key idea is to add this overall policymaking idea which it—now is implicit in the so-called "State Board of Education" in Section 9.

**CHAIRMAN GRAYBILL:** Very well. We're ready to consider Section 10. Will the clerk please read Section 10.

**CLERK HANSON:** "Section 10, Board of Public Education. There shall be a Board of Public Education, which shall exercise general supervision over the public school system and such other public educational institutions as assigned by law. Said Board shall consist of seven members, appointed by the Governor, with confirmation of the Senate, to 6-year overlapping terms. The Governor and the State Superintendent of Public Instruction shall be ex officio nonvoting members of the Board. The duties of this Board and the Superintendent of Public Instruction shall be prescribed by law." Mr. Chairman, Section 10.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 10 of the Education and Public Lands Commission Committee Proposal, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** And I'm going to be brief, sir. Very briefly, if you look at this section compared with the old section, you'll find out that we've eliminated the word "control". Now, we did this to alleviate any fears that the local boards might have. This indicates, in our mind, that the local boards should stay in control of education at the local level. And we've indicated this also by passing the section, last Friday, which gives them control over local education. We use the word only "supervise". Notice the words "such other educational institutions as assigned by law". Here our intention is that things shall remain as they are presently. Now, under statutory law, the vo-tech centers are assigned to this board. It is the intent, as I've indicated before, that this remain—the intent of the committee—remain as it is—also, at the suggestion of Morris Driscoll, who is the President of the Vo-Tech Center at Butte, and other leaders of the other vo-tech centers. Now—and we're also going to indicate this in the other board under Section 11 for the community colleges. Now, when we get to the duties of the Board and the State Superintendent, we had a big, long discussion, quite a bit of deliberation. And the possibilities, of course, were do we make the board—give them power over the State Superintendent? Now, we thought that that was probably ridiculous, since she was an elected official. The other alternative is, of course, do we make her, then, in complete charge of this Board appointed by the Governor and representing, directly, the people? We thought that wasn't the best thing to do either. Then we looked at the present situation and we found that, as—at present, the duties and—how do we word it?—yes—the duties of the Board and the Superintendent are prescribed by law, and so we left it the same. It has worked quite well in the past, so this is why we left it as it is. Mr. President, thank you.

**CHAIRMAN GRAYBILL:** Is there discussion of Section 10?

Mrs. Eck, do you want to—

**DELEGATE ECK:** Mr. Chairman. In keeping with the recommendations that George Harper just made, I would recommend—or I will move to add, after the word "Governor", line 10, page 6, the words "Commissioner of Higher Education".

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a moment. Do I understand that you propose an amendment which would add the term "Commissioner of Higher Education" on line 10? So that the sentence would read: "The Governor, Commissioner of Higher Education, and State Superintendent of Public Instruction shall be ex officio nonvoting members."

**DELEGATE ECK:** Yes.

**CHAIRMAN GRAYBILL:** Very well. Mrs. Eck has an amendment to that effect.

Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. Obviously, the idea of the Commissioner of Education really belongs in the next section on Board of Regents. But our thinking was that each of these boards should have an executive officer of equal status and that if the Superintendent of Schools is to be an ex officio officer on the Board of Regents as listed—and I think that she should be—also the Commissioner of Education should be an ex officio officer on the Board of Public Education in order to provide the coordination among these groups. We also, in looking at this, can see, as George had said, that the Board of Education itself, sitting as a joint body, should do more than just take care of matters of common interest and make final decisions upon the budget—that, really, there's a lot of planning, evaluating, policymaking that probably should be done as one joint body. Now, you can say that this is implied—and I think, indeed, it is—by a budget-making duty, but on the other hand, it would be very possible to circumvent any central planning and central evaluation in policymaking. It could be that these two boards would just come together as one to—to really haggle over the budget, and I don't think that this is what any of us have in mind here. So far as the need for a Commissioner of Education rather than an Executive Officer, I think that probably, except as a semantic maneuver, it really doesn't make much difference. It's true the Executive Officer could be truly a person with as much status as the Superintendent of Public Instruction, but I think that the Commissioner of Higher Education does infer this kind of status, and I really strongly feel that this is what the University System needs—is a person at the head who really serves as an officer for the Board of Regents and to whom—and who is responsible to the Board of Regents, rather, really, than being responsible primarily to the various university presidents. I think that through a strong person in this office, we'd get the kind of coordination that the people of Montana have been asking for for a long, long time. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Would Mrs. Yeck—Eck yield to a few questions please? Sorry, Mrs. Eck. (Laughter)

**DELEGATE ECK:** I'd be glad to.

**DELEGATE CHAMPOUX:** It was a hard Saturday, and I haven't recovered yet. Mrs. Eck, in your Section 11 that you're going to propose—is it proposed? Do I understand it that this individual, the Commissioner of Higher Education, is going to be appointed by the Board and his duties assigned by the Board?

**DELEGATE ECK:** Yes, very much so.

**DELEGATE CHAMPOUX:** Very good.

**DELEGATE ECK:** Actually, there would be—what we have in mind for Section 11 is that the name "Commissioner of Education" would replace the name of ex officio—no, administrative officer.

**DELEGATE CHAMPOUX:** Thank you. I'm in support of that amendment.

**DELEGATE ECK:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman and delegates. I hesitate to arise and oppose my delegate from Gallatin County, but as I mentioned Saturday, we have tried chancellors, and we've had good chancellors, and they were really hired commissioners. And I think we're just building a big monstrosity here, like the pioneers of the plains. They built one building, and when the family grew, they put a lean-to, and then it had a lean-to onto a lean-to. And I think that we should not put a commissioner into the Constitution. Let's leave it to the Legislature. If they feel they need a commissioner, let them do so.

**CHAIRMAN GRAYBILL:** Is there further discussion?

Mr. Rygg.

**DELEGATE RYGG:** I guess I don't see why this commissioner is necessarily a chancellor. All we're doing is giving the present Executive Director, which they have now, a little more authority—which I think he needs, because, right now, I'm not sure who he looks to—if he looks to the six presidents or if he looks to the Board of Regents. It's my understanding he's supposed to be working for the Board of Regents in doing—as is suggested in here, but I have the impression—and it's only my opinion—that he looks more to the six college presidents and does as they wish. I can't see why this would be putting in a commissioner system. I think it would just be giving the man who works for the Regents a little more authority and a little more ability to try to arrange things the way they want. I think it's a good idea.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. Would Mrs. Eck yield to a question, please?

**CHAIRMAN GRAYBILL:** Mrs. Eck?

**DELEGATE ECK:** Yes, I would.

**DELEGATE DAVIS:** Mrs. Eck, do you think there should be any—did you give any thought to the fact as to whether you should call it a "Commissioner of Higher Education", so it wouldn't be confused with the fact that this man might be over all education?

**DELEGATE ECK:** Yes. I—in my amendment, that's what I have. I think that when I was speaking last time, I referred to him as the "Commissioner of Education"; "the Commissioner of Higher Education" is what the amendment reads.

**DELEGATE DAVIS:** All right, thank you.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman. I would like to speak a moment in support of this idea. I would like to call the attention of the body to the fact that this educational burden we have in Montana is really our most important trust and our biggest business. I don't know what the total figures that we spend on education amount to, but they're something in excess of a hundred million dollars a year. And I think it is incumbent upon us to be very careful that we discharge this responsibility fully. And this brings me to the setup that we have here of these two boards. Now, I quite agree with Mr. Dahood that areas of specialization are significant today and that a group of laymen cannot absorb all the facts and the problems in either area in the course of a few meetings, and I think they really need some expert counsel and assistance in discharging their responsibility. The problem with Section 9 is that it creates this State Board of Education without any head, without any guidance and simply says that it shall meet on matters of "mutual concern", which are really very vague. We added to the responsibilities of that board the matter of budget duty, and I think this could very easily become a situation where the Board of Regents presents a budget, the Board of Public Education presents a budget, and the two are then simply combined by the super board and transmitted to the Legislature. In other words, it could well become merely a conduit for the two separate budgets. Lacking in all of this is any concept of long-range programming and policy evaluation. I think we just have to have, in a hundred-million-dollar-a-year business, some office that will be looking ahead and making the best effort it can to see that we dovetail and avoid duplication and that we look ahead and we keep up with the developments in education as they come forward. And therefore it seems to me that the idea of clearly enunciating the duty of the super board to take care of program evaluation and policy in administration is essential in order to keep us from getting in a position of rivalry between the two boards. So I hope that we will be careful to include a clear statement of responsibility for the super board. As it is now, with just having responsibility for a unified budget in there, I think we're in danger of falling into one of the mantraps that seem to prevail in the Powder River country of having "expressio unius exclusio alterius." Therefore, we had better be careful to make sure that the big board has the big responsibility. And I think this all has to be knitted together in the study of Sections 9, 10 and 11. And it seems to me that we can't expect a board of amateurs to discharge this awesome responsibility without some real professional assistance. The Commissioner of Higher Education would provide the service that we need. If we don't do this, it seems to me this is very similar to imagining the Dallas Cowboys trying to operate without the services of Tom Landry. If they tried to use only the line coach and the backfield coach and the runback coach and the trainer, they probably wouldn't function very well, and I'm afraid that's the position we're putting our lay Board of Education up against unless we give them some professional guidance. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I don't have any particular objection to whatever it is we want to call this person, Commissioner of Education or whatever, but it seems to me that we are confusing a couple of things here. We have delineated an Executive Officer to the Board of Higher Education in the next article, in Section 11. And it seems to me that the thing that we're doing here is that we're giving certain duties of general supervision of the two boards to a person who is appointed by the higher board. To me, this seems to be a little inconsistent, and I think that, as the committee proposal was outlined originally, that we intended that there should be someone to have some general supervision in both areas and to act as a liaison person and that that person would be, in fact, the elected Superintendent of Public Instruction. And it just seems to me that an elected official, elected by the electorate of Montana, would be in a much more responsible and better position to act as this liaison person than one individual appointed by one of the boards to sort of be the watchdog over both the boards. And I can't really see the logic or the reason for having one person selected by the higher Board of Education to be in this position and to serve as an ex officio member on the lower board. I think, really, that the proposal that the committee originally outlined provided for this type of liaison and I would have to resist the motion at this point.

**CHAIRMAN GRAYBILL:** Mr. Dahood, the record is going to show your presence so you may vote. Go ahead.

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, I have to agree with Mr. Harbaugh. It seems to me that what Mr. Garlington says about we have to have an expert to take a look at our higher educational system, to provide some guidance there, makes good sense. I don't quarrel with that, but I don't see why, in order to get that person, that we have to have two Boards of Education. I think

Charley Mahoney was right the other day when he said we've got a monster. And there's probably no solution to the whole thing, because we've got six units in this huge State of Montana. They're all fighting for prestige, and when things begin to go wrong with their particular area or their particular school, all they do is send their people over here to lobby in this state Legislature for the things that they want. And they have—of course, the Legislature has the power to say "This is what you're going to get", regardless of what any particular board may say. We're stuck with that; and I don't care what we do in this Constitutional Convention, you can't stop people from fighting for these various units that are around the State of Montana. That's always going to be. Maybe we were very unwise in the beginning to set up these six units, but be given the size of the state, we decided that in the early days that we had to do it. And we've gone ahead, and now we have it. But I read this plan; I've looked at it; I've tried to be objective about it. I can't see where setting up two boards is going to do one thing for the State of Montana. If we want to set up one Board of Education, with the Governor and the Superintendent of Public Instruction on there, and then to give them direction—that one board direction that we will have a Commissioner of Higher Education in the Constitution, fine. But let's not set up two boards. All they'll do is fight. Now, let's quit kidding each other. When they get down to the nitty-gritty of the money, which is where we always separate, and these two groups over here want a bigger piece of that pie, you're—they're not going to get along and they're not going to come to agreement. So let's have one board and go ahead and put in a Commissioner or a Chancellor or whatever you want to call him, but one board is all we need in the State of Montana.

**CHAIRMAN GRAYBILL:** Now, the Chair is somewhat disturbed by the turn of events here, because we did debate that and vote on it the other day. And I didn't want to stop you, Mr. Blaylock, from not considering the amendment, but the amendment is to add the term "Commissioner of Higher Education", so let's try and stick to the subject.

Mr. Woodmansey.

**DELEGATE WOODMANSEY:** I feel that by adding the words "Commissioner of Higher Education", we'll come to the point where we no longer have a Superintendent of Public Instruction in the state. We'll have a superintendent for elementary and secondary schools, and I resist the amendment.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** I think, as a member of the committee, I would say the amendment really doesn't make that much impact on what we are recommending. I would support it. It's in the name that you're giving to the executive officer and implying by the name, as Mr. Garlington put it, a bit more recognition for the scope of the duties in this vast educational enterprise that we have in the state. I don't want to go back and debate what we did Saturday. We did at that time, I think, find ourselves feeling the need for the Board of Regents. I don't think this is the time to debate it. We may when we hit Number 11, but I think it makes sense to have this person who is in higher education, working with the Regents and the University System, to also be represented in the policymaking function that may be outlined for the joint boards. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I would like to make a comment in regards to Mr. Woodmansey's comment. At present, the State Superintendent of Public Instruction has very little to do with higher education, only in the areas of the vo-tech and the—that is, post-secondary—at least beyond the high school—and the areas of vo-tech and some aspects of the community college program. The only area which he would get involved presently is on the State Board of Education when they wear the ex officio hats as the Board of Regents. And she has stated publicly she'd rather not be involved in higher education. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. This reminds me of a story that—I suppose I shouldn't tell a story, but maybe it were early in the morning, and I suppose I could take that much time. This is in the book *Rawhide Rollins* of which Russell wrote quite a story. And he said that this boy was born up in Vermont. He said those kids didn't get to school very early, and he said the boys got quite big, because they had to go out to work, and so they just had a short time. So when they got up to this size, they determined that they'd kind of tell the teacher what to do, and if she didn't or he didn't, they'd just run him out. He said it was pretty good, and so the kids weren't getting much schooling. And he said the parents didn't particularly like that, so they decided they'd send one fellow down to New York City to look for a teacher. They wanted to get a stranger. And he said they go down and they find a prizefighter. He's out of work, and he said, "You know it's kind of funny, come in there the first morning and," he said, "you know, his front legs hung clear down to his knees." And he said he could back out of his shirt without unbuttoning the collar. He said he called the school to order, and the very first thing, somebody said something. And he said the next thing he knew, he was pouring water on him, bringing him to. And he said—so he lined them all up and he said the girls were all up in the front of the row and the little kids and he said, "Now listen, you little kids move back"—says, "I'm putting all you big boys up in the front. Now," he said, "we're going to sing a little song—'We love our loving teacher and love his kindly rule'." Now, this is what we've got with the University System. I've been thinking this over quite strongly since Saturday, and I'm bothered about this. Maybe this is not a solution, but it's something to think about. And it is an amendment, Mr. Chairman—I'm just putting it up—that we'd have a committee of three for the Board of Education. This committee of three—one would have to be from labor. And I'd like him out from either the teamsters or the bricklayers or the cementmasons or something. I want him big, and I want him tough. Then, I want a great big guy—something like Torrey Johnson over here—out of the agricultural step; I want him big, and I want him tough. Then I want a woman doctor on that board to administer first aid. Then I want them to put these six units of the University right up in the front row and have them singing that song every Monday morning—"We love our loving teacher and love his kindly rule." This is what we've got. This is the whole trouble. Mrs. Eck, your point is good, but Chancellor Brannon couldn't handle them; Chancellor Selky couldn't handle them. I'm telling you, there's never been a chancellor able to run that six units of the University. I wish that we had only one, like Wyoming. This would be fine. Then there wouldn't be the fight. This idea of a business manager as a chancellor—Now, do we want to put this in the Constitution? I remember one old senator that sat up here, and his only job was to see there was no appropriation made that the University System could have a chancellor. Now, I tell ya—it was Old Man Garber from Sanders County. This can happen again—they'll just get out their business manager. Now, if we could go out here and get a small board on the payroll all the time, so they didn't come in here four times a year and they've been looking after their cows or they've been looking after their own business—and they're fine people, but you can't deal with this fellow that's been on the payroll 7 days a week out there, and he's getting more than the Governor. This is what's happening. I think we have to realize that if we'd come out—I, myself, if I had my way about it, we'd leave it all to the Legislature—one thing—and let the Legislature—because every 4 years, they're going to change it anyway. And, 20 years, we'll have to have a constitutional amendment to offer. I watched the University System when they had a very small board. Then everything was going to be said. Senator Herb Hate from Fergus County says if we can get the eight-men overlapping terms, everything is done. We're no better off than we've had. This is what's bothering me with this University System. We have to get somebody to whip those boys into line. Now, I listened yesterday to "60 Minutes", and I thought it was marvelous. Here's Hayakawa from San Francisco State telling how he got control of that University again. And he's got them fellows standing now on the front row singing that song every morning—"We love our loving teacher and love his kindly rule." (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Mahoney, could you supply the Chair with a copy of that whole song? I'd like to work it over. (Laughter)

Mr. Champoux. Oh, wait a minute. Let's let Mr. Wilson talk, Mr. Champoux.

**DELEGATE WILSON:** Mr. President, ladies and gentlemen. I'm perplexed by the things that we're doing here and the problems that we're creating, and I suggest to you that if you're going to have a Board of Education, what is this board going to do? You're proposing now to set up an executive officer who'll be in charge of education. He's going to sit there and tell the board what to do, I guess. Is that what the proposal is? Now, if you're going to have a Board of Education, shouldn't they have the right to elect their Chairman? Maybe you want the Governor to elect a Chairman. Maybe this isn't bad. But if you are going to have a Board of Education, if they're going to have any leeway to operate, shouldn't they be the one that will pick their executive officer? Now, you're talking about the Superintendent of Public Instruction. She's an elected official; supposedly, she is in charge of education, period, as an executive officer. Wouldn't it be possible that this Board of Education could choose her as an executive officer to mind the store when these board members are not present? Fellow delegates, I have sat on state boards. We've picked our own Chairman. We had executive officers that was in charge of the day-to-day functions, of the regulations that we prescribed. And I see—foresee—the problems that you're creating here for this Board of Education. In my opinion, you just as well not have this Board of Education if you don't leave them the flexibility to perform their duties. And I think this whole three sections ties together, and I think we should be thinking about this as we're considering this. I disagree that you should have the Governor and the Attorney General as members of this board. Now, the Governor can come in any time and sit down with this board and make his wishes known. The Attorney General is the legal officer, and the board can call on him at any time that they have a legal problem. But can you imagine serving on a board—the Governor has appointed you, and he's a member of the board—he sits there with you. Are you going to feel like arguing with the highest officer in the state about any of these problems? What kind of position are you, as a board member, going to be in, sitting there arguing with the Governor? You just don't do those things. Now, many times in the board that I sat on—I sat under three different Governors—that Governor would come over and sit in with us, and certainly we listened to him. And he was aware all the time of the things that we were doing or proposing to do. I don't wish to belittle the office of Governor; I think it deserves a lot of prestige. But I can see the harm that you're doing if you have the Governor required to sit in on every board meeting. I suggest that you think about this just a little bit. I think the board should have the flexibility to elect its own executive officer, if it so chooses. Perhaps the Legislature may want to take some action on this. But let's provide, if we're going to have a board—and I support the one board conception—but if we're going to have even two boards, then let's have them free to exercise the prerogatives that they wish to do so with education. Thank you, Mr. Chairman.

**DELEGATE CHAMPOUX:** Mr. Chairman. First of all, I thought the discussion was on the inclusion of a Commissioner of Higher Education under Number 10. At this point, I don't—I haven't heard of anyone suggesting that we put a education czar at the top of this whole system, and I would certainly be against that because you would have power concentrated in one individual and there's no state system in the United States left who has a single individual who governs all of education. They found out what happened in some other states when this happened. Now, in reference to Mr. Mahoney's comments, Charley is even better early on Monday morning, and few of us can say that, I'll tell you. But I have a question, Charley. You named three people. Who's the teacher? Who are they singing to? Now, if we get a Commissioner of Higher Education on the Board of Regents, they'll have one person to sing to. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, if I may be permitted to discuss this generally as a member of the Education Committee. We're really talking, now, at this sole issue, I suppose—if we want to limit it—as to whether you want a Commissioner of Education after we get over to the next article. And that—if you do, then whether you want him as a member of this Board of Education. It would seem to me that he's a nonvoting member, for consistency in thought and consistency in action throughout your educational processes, and as big an issue as this educational thing is and as big a problem, that he certainly is in a good position and should be on there and should be interested in the total education. I would like, off the point, if you'll permit, Mr. President, to clarify a little bit that was said last Saturday on the floor by our very able and hard-working Chairman, Mr. Champoux, in his enthusiasm when he referred to some of the people as "bureaucrats". That did not represent, I don't think, the feeling of the body in the thing; and when he referred to people as "special-interest groups", particularly the School Boards Association, that also was not a comment from all of us. And I'm sure, in his enthusiasm in defending the project, that was said. However, we have invited people to appear here; I, personally, have invited people to appear and present their views. And all these things have to be able to stand constructive criticism, or we're not going to get very far with it. So I'd like the record to show that that was probably in abundance of enthusiasm, rather than attacking anyone who didn't like our plan just the way it was written, because we certainly are open to everyone's suggestion. I favor the one board; as a matter of fact, I favored none in my delegate proposal, left it all to Legislature. But I was in the minority, and I signed the majority. And it's the majority will here that we have two boards. We've voted on that Saturday, and we spent a full day discussing it. Now, when we discussed whether the Superintendent of Public Instruction should be elective or appointive, she appeared and testified at great length about the duties of her office, how challenging they were and how great they were. And we toured her office, and we toured the annexes downtown where we have many other offices. And right now, her office is one of the biggest. I don't know, if there was a challenged matched between the Highway Department and Superintendent's office, exactly who would win, but it would be close. And then, we also have all the additional federal funding that we're going to have to look forward to coming. And there are bills before the United States Congress now, and these are going to be involved and have to be administered. So I think that the Superintendent's position that she should not get involved in the higher education, other than incorrelating to it, is very well taken, very well thought out on her part, and that it is a tremendously big job—just your financing, your public and elementary education, all your special programs. Therefore she should be on the Board of Education and on the Board of Regents. Now, the Executive Secretary; we've provided for an Executive Secretary in our proposal, the majority proposal. The name won't change it. We have him already. You're going to have to have an Executive Secretary. You can't have a board under as big a project as this now. Our board—right now, our Board of Regents—one member testified before our committee, and, I hope in a nonsarcastic manner, I asked if—how many units had been visited by this particular one. I said—well, they visited—only been on 2 years—they visited two units of the University System and one vo-tech. Really left me kind of cold, you know—I mean, as big a problem as this is. It's—if there's any way that they would be freer to devote more time to higher education, I think we should make it possible. It's an area that there's a lot of difference of opinion, but we thrashed it out very thoroughly Saturday. This is the majority, the democratic process. We decided we're going to have two boards, we want to make them as workable as we can. So it seems that a Commissioner of Education is a nice name—or Higher Education. I think one other point we should have clarified is the amount of time the two boards spend. A lot of discussion was given to that, and I think we should have that cleared up as we go along. It was discussed that they didn't spend much time on lower education. And what's the reason for that? Well, it's very, very simple. We've got local school boards that handle that. There's local school boards run the high schools and the grade schools. There's nothing for the Board of Education to do with grade schools, high schools, and elementary except approve of the curriculum and that sort of thing. Except one other thing—we have that great, expanding vo-tech program. It's our thought that should stay with the Board of Education. And as that program expands, it may justify this second board by itself. It's a great program, it's an expanding program, and I would be hopeful that we get a board and take some of the weight off Mr. Driscoll's shoulders and help he and the other people with this program, who battled it in this educational field pretty much by themselves to get it through. So I think your second board, your Board of Education and your Board of Regents, is just as workable as any plan anyone else has here. No one has come up with a better plan, and the majority has approved this plan. So I would be hopeful that we can proceed along the line. I'm kind of partial to Mr. Harper's thing as making it one article and making it three subsections, which would tie it all together, maybe, a little bit clearer. So I would support the Commissioner of Higher Education being on the Board of Education, as a nonvoting member, so they would keep all these things together. I think the Governor should be on this board. The Governor testified before our committee. He said he didn't know too much about what was going on in education, and he thought he should. And I think he should be on that board. That doesn't mean he has to attend all the time, as a nonvoting member, but it means that he can sit in on those meetings and keep abreast of that for his budget message and the total program for the State of Montana. So I'm hopeful that we can proceed with this the way it is. I don't think you're going to come up with better—anything better. You could discuss the problems, as we did for a month in the committee. We don't have a solution. If this will implement getting this educational thing off the ground, where it will be more flexible and where it will open the door for a total program for the educational process of the State of Montana, I think it would be a good thing. I don't think we can do more. I think Mr. Garlington said the doctrine—the—well, we call it the "Powder River Latin Doctrine"—is one you want to be concerned with. I was concerned over the weekend even about putting a unified budget in that article Saturday, because it might be easily construed to be—that that's all they were intended for, and I sure don't think it is. I'm wondering, if we put in some other language, if that will then be a limiting thing. I'm wondering if those things should not be left to the Legislature as to the functions of the two boards, to keep it flexible as we go along. Thank you.

**CHAIRMAN GRAYBILL:** The journal may show Mr. Drum's presence.

Mr. Martin.

**DELEGATE MARTIN:** I'm wondering if Mr. Davis would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Davis?

**DELEGATE DAVIS:** Yes, sir, Mr. Martin. I yield.

**DELEGATE MARTIN:** Section 11, you provide for an executive officer of the Board of Regents. In Section 10, you don't. Had you—did the committee consider designating the Superintendent of Public Instruction as the executive officer of the board?

**DELEGATE DAVIS:** I'm just taking a look, Mr. Martin. I'm sure that it was the consensus of the committee—at least, it would be my thinking—that she is the chief elected official in the—that area and that she would serve in that capacity unless, for some reason—it was flexible—if they didn't want her to do that.

**DELEGATE MARTIN:** In—if I may just go on—Mr. President, if I may just ask another question.

**CHAIRMAN GRAYBILL:** Mr. Martin?

**DELEGATE MARTIN:** In the Executive Committee, we suggested that perhaps she might serve as executive board member—executive officer of the board, and she declined and set forth some objections to it. I'm just wondering, wouldn't that be a good idea?

**DELEGATE DAVIS:** Well, Mr. Martin, I personally think it probably would be, but if there are some reservations on her part, it's left in the way the article is written, it's left flexible. It says "as provided by law". If the Legislature made her Executive Officer, then she would be. If it didn't work out, then they could leave the Board the authority to elect their own Executive Officer. In other words—without going through a constitutional process again—in other words, it says "provided by law"; and the Legislature could put her in, and if it didn't work, they could take her back out again.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Would Mrs. Eck yield to a question?

**CHAIRMAN GRAYBILL:** Mrs. Eck?

**DELEGATE ECK:** Yes, I would.

**DELEGATE HARBAUGH:** I think there's been a lot of confusion here as to just what we're talking about, and I'd like to ask you what would the authority and the responsibility of this Commissioner of Higher Education be in the area of the elementary and secondary education?

**DELEGATE ECK:** I don't see his having any responsibilities here, but I do think that it's very important, if you're going to have a coordinated program, that he would sit in on their meetings and would be aware of what they were doing. Just as I don't really see the Superintendent of Public Instruction's taking any responsible role with the Board of Higher Education—with the Board of Regents. In other words, I see each of these persons sitting on the boards of the other primarily as liaison persons, to coordinate and interpret, also, the program of the other board.

**DELEGATE HARBAUGH:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I think this helps to clarify the thing we're talking about. We're not talking here about someone to oversee the total educational program of the state when we're talking about this commissioner, and I think that needs to be clarified. Really, I think there's no objection to having an executive officer for higher education. We've mentioned this in our article in Section 11, and as long as this is clear, I think we can get on with this subject.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. President. I wondered if Mrs. Eck would yield to a question.

**CHAIRMAN GRAYBILL:** Mrs. Eck?

**DELEGATE ECK:** Yes, I would.

**DELEGATE BATES:** Dorothy, I noticed you placed this executive—or this Commissioner of Education between the Governor and the Superintendent of Schools. Would you anticipate this would be an elective office, then, or an appointive office?

**DELEGATE ECK:** Oh, no. It states down in Number 11 that, in taking the place of the Executive officer, that it's appointed by the Board of Regents. You know, you put her in there—you put him in in that place, because then you don't have to add any "ands" or "commas".

**DELEGATE BATES:** Well, then, would you yield to another question?

**DELEGATE ECK:** Yes.

**DELEGATE BATES:** Then you—the executive officer mentioned in Section 11 would be the same person as you were anticipating here?

**DELEGATE ECK:** Actually, all we're doing here is changing the name from Executive Officer to a Commissioner of Higher Education, but we're also thinking of him in—as having a greater status here, and for that reason, we would like to see him serve as an ex officio member of the other board.

**DELEGATE BATES:** Thank you. Mr. Chairman, I feel, then, this should be clarified if we—in this article if we continue—or if we vote to retain this Commissioner of Education, because in the next article—or next section, it specifies an appointment, and I'm just wondering just how it would be handled. Thank you.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. Would Mr. Champoux yield?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I yield.

**DELEGATE JAMES:** Now, I think, Rick, I'm a little bit concerned about this Commissioner of Education—

**DELEGATE CHAMPOUX:** Higher Education.

**DELEGATE JAMES:** —of Higher Education. In your estimation, if you agree with this, would he be coequal with the State—the elected State Superintendent, or a subordinate, or what would the relationship be?

**DELEGATE CHAMPOUX:** You have two questions there, as I see it. Number one, certainly he wouldn't be coequal, because she's an elected official. In terms of subordination, no, since he would be on a different board than she would. And the only way he would get himself involved in this other board, which would be ex officio, nonvoting, would be strictly as an advisory capacity. If something came up, as he was sitting there, that they want to know about higher education, he would be able to tell them. That's all it's about.

**DELEGATE JAMES:** Thank you, Mr. Champoux.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Would Mr. Champoux yield again?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I will yield.

**DELEGATE JAMES:** There's another thing that bothered me here, this body corporate. There seems to be a problem here about the various units of the University System all coming together with their hand out. And do you feel that this body corporate would have authority to unify the University System so that we wouldn't have this problem? Is this implicit in your majority proposal?

**DELEGATE CHAMPOUX:** There are three questions involved here. First of all, I'll make the statement—I don't think the discussion of the body corporate at this point is relevant, because we're going to be going into great detail, I imagine, when we get to Number 11. Number two, I am not a very effective lecturer, because I run down at the end of the hour, and that was quite a point of emphasis last Saturday in my talk. And that's one of the things I hope to come about—we hope to come about—that is to say, some authority to bring all that higher education together, to stop the proliferation of courses, to stop the duplication of programs, and so forth. That's our intent; yes, sir.

**DELEGATE JAMES:** Thank you, Mr. Champoux. I would say, then, that this majority proposal does have the flexibility that's needed, and I would urge its adoption. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Now, the issue is on the—adding the words "Commissioner of Higher Education" on line 10 in Section 10.

Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. I'm somewhat perplexed by the lack of anybody available, in these proposals, who would assume the responsibility for the big picture. It has always been my understanding that the Superintendent of Public Instruction was elected by the people to represent them in the responsibility of getting the total picture of what our educational problem is here in the State of Montana. And the testimony of both Mr. Davis and Mr. Champoux indicates that the present Superintendent of Public Instruction has other, more important business than assuming any responsibility for the University System. Now, it seems to me, Mr. Chairman, that there exists in our state, at the present moment, a tremendous cloud hanging over our educational system. This is due, in my opinion, first, to the ascendancy of professionalism on the lower level and, secondly, on the dominance of the University System, aimed primarily on self-perpetuation and self-aggrandizement. I contend, with Charley Mahoney, that it will be impossible for us to resolve this problem here and now. Time and legislative action alone will be able to handle it. Our aim should be to make it possible for the future to face its responsibilities. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I had not intended to discuss this, because I am definitely a layman in the field of education. However, I've developed some ideas about the matter after listening to the debate and reading and a little study. I understand the proposition advanced by Delegate Eck for a Commissioner of Higher Education which will, undoubtedly, appear later in Section 11 and is merely incorporated in Section 10 to make up a liaison. I think that, perhaps, that is a good idea for the Board of Regents. It takes the place, as I understand it, of the present Executive Officer. In the—for the board—for the secondary and elementary area, we already have the Superintendent of Schools, an elective officer. And someday, according to the information produced here and which we heard in the Legislature when we enacted the statutes pertaining to the vo-tech, there will probably need to be a similar officer to handle vo-tech. Any and all of those now could be under the present Board of Education; the Superintendent is, the Executive Officer of the University is. They are already functioning. As I examine these Sections 9, 10 and 11, of which the Commissioner of Higher Education would be in two of them and, by indirection, in the Section 9, it seems to me that about all we have is we've taken Section 11 of the contemporary Constitution and divided it up into three parts—parcels, and into one of them we have incorporated a body corporate, and we are in process of performing an operation on the body corporate which would provide for the budgeting and for the auditing which we already have under Section 11 in the contemporary Constitution. So, I am drifting swiftly into a current which is carrying me back to Section 11 of the current, contemporary Constitution. Mr. Chairman, change merely for the sake of change is no good. Section 11 of the present Constitution provides everything that we have or need, and the Legislature would, through it, be empowered to put on the fringes and add the embellishments and take care of the necessities that will accrue in the future. I think that I am going to support a single body, and I hope that someone will provide a substitute to place Section 11 into the running. If someone else doesn't do it, I may do it myself.

**CHAIRMAN GRAYBILL:** Very well. Now, the Chair wishes to announce that I hope we're not going to have to redebate everything we went over last Saturday. And I have seven amendments to Section 11 before me, and I want to finish the Education Article, and I'm sure all of you do. And so, from now on, I'm going to ride herd rather tightly on you, and I expect you to talk to the subject of whether or not you want the words "Commissioner of Higher Education" put in on line 10. If you want to talk about that, I'm ready to listen.

Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. I'd like to suggest that the addition of the Commissioner of Higher Education might be much more important than we think. Remember the opening talk of Delegate Champoux—when there was some talk about the present Board of Regents and that estimation that maybe they spent 80 percent of their time actually on the University System—or maybe it was 90 or someplace in that area? What I'm suggesting is that by making them separate, we're really not putting so much more power there, because that's what they are anyway. And so, the adding of the Commissioner with—I would say, with much more strength than you're talking about, Delegate Eck, is really the only thing that we're doing to strengthen the higher education system. When it really comes down to it, it's not too much different without this commissioner. And that's why I think it's extremely important.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mrs. Eck's amendment, which has the effect of placing on line 10, after the word "Governor", the phrase "Commissioner of Higher Education", so that the sentence reads: "The Governor, Commissioner of Higher Education and State Superintendent of Public Instruction shall be ex officio members—ex officio nonvoting members." I understand we want a roll call vote. All in favor of Mrs. Eck's amendment, vote Aye; opposed, No—on the voting machines. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Will the clerk take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Absent |
| Artz | Excused |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Absent |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Absent |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Absent |
| Mansfield | Absent |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Aye |

| | |
|---|---|
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Absent |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 53 delegates voting Aye, 32 voting No.

**CHAIRMAN GRAYBILL:** 53 delegates having voted Aye, Mrs. Eck's amendment prevails and the term "Commissioner of Higher Education" shall be put in line 10. Is there other discussion of Section 10? Very well. Members of the committee, you have before you for your consideration, on the recommendation of Mr. Champoux that when this committee does arise and report after having had under consideration Section 10 of the Educational Article, that the same be recommended for adoption. All in favor, say Aye. Do you want a roll call vote?

**DELEGATES:** Yes.

**CHAIRMAN GRAYBILL:** All right. We'll have a roll call vote. All in favor, vote Aye on the voting machines; opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Absent |
| Artz | Excused |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Absent |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Absent |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Absent |
| Mansfield | Absent |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |

| | |
|---|---|
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Absent |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 62 delegates voting Aye, 20 voting No.

**CHAIRMAN GRAYBILL:** 62 having voted Aye and 20 No, Section 10 is adopted as amended. Will the clerk please read Section 11.

**CLERK HANSON:** "Section 11, Board of Regents of Higher Education. There shall be a Board of Regents of Higher Education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the Montana University System and shall have—and shall supervise and coordinate other public educational institutions which may be assigned by law. Said Board shall constitute of seven members, appointed by the Governor to 6-year overlapping terms, subject to confirmation by the Senate, under regulations provided by law. The Board shall appoint its Executive Officer and prescribe his term and duties. The Governor and Superintendent of Public Instruction shall be ex officio nonvoting members of this board." Mr. Chairman, Section 11.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 11 of the Education and Public Lands Committee Proposal, that it recommend the same be adopted. I went into a long, long discussion of this last Saturday, and I don't intend to repeat it at this point. The only thing I want to notice here is that the section which says "shall supervise and coordinate other public educational institutions as assigned"—this is to—the intention here of the committee is to have the public community colleges under this Board of Higher Regents, as they are presently, by statute. As a matter of fact, that phrase is directly from the statute that now assigns them to the Board of Regents of Higher Education, and it was their wish and desire. It also provides flexibility, however, for movement in the future. Later on—I'm not sure if Mr. Heliker is ready to work into it at this point, but he was going to discuss something about the body corporate. Not now?

**CHAIRMAN GRAYBILL:** He's next.

**DELEGATE CHAMPOUX:** Okay. Thank you.

**CHAIRMAN GRAYBILL:** Very well.

Mr. Heliker, you have an amendment. Do you want it read?

**DELEGATE HELIKER:** (Inaudible)

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 11, page 6, of the Education and Public Lands Committee Proposal by adding, at the end thereof, a second paragraph to read: 'The Legislature shall be given an annual accounting of all income and expenditures by each unit of the University System'." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker has an amendment which would add, as a section—a separate section of Section 11—separate sentence, at least—the idea that there would be an annual accounting of all income and expenditures by each unit of the University System.

Mr. Heliker.

**DELEGATE HELIKER:** As I said on Saturday, Mr. Chairman, the purpose of this amendment is simply to lay to rest any fears there may be, as expressed, for example, by Delegate Aasheim, that the University units would not be required, under the majority proposal, to render an accounting to the Legislature of their expenditures. This—the purpose of this is to insure that that—although I think it was clearly implied in the majority proposal—but—to—nailed it down and made it certain. Now, may I ask Mr. Champoux a question?

**CHAIRMAN GRAYBILL:** Mr. Champoux, will you yield?

**DELEGATE CHAMPOUX:** (Inaudible)

**DELEGATE HELIKER:** I was tuned out when you were saying something about "body corporate".

**DELEGATE CHAMPOUX:** Well, I thought you were going to discuss something in terms of the fears of this concept of the body corporate, one of them being that the Legislature would not have control, and you were going to indicate that this certainly is an area of control.

**DELEGATE HELIKER:** Yes. Mr. Chairman, if I may comment further. The crux of the matter here, as I see it, is whether we're going to give the Board of Regents the power to manage the University System effectively. In order, it seems to me, for them to have effective managerial power, they are going to have to have the kind of power that is established by Section 11 as proposed by the majority, which is to say, the power to govern and control the academic, financial and administrative affairs of the University System. That, right there, is the core of the matter. And if we substitute other language that their powers shall be established by the Legislature or provided by law or something of that sort, then what we are doing is cutting the guts out of this proposal. Because the proposal is to give an autonomy to the Board so that they can manage effectively as the managing authority of the University System. Without that authority, then, they're—we're back in the old rut. That's all I have to say now, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Heliker's amendment.
Mr. Berg.

**DELEGATE BERG:** Will Mr. Heliker yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Heliker?

**DELEGATE HELIKER:** I yield.

**DELEGATE BERG:** Is your amendment limited to the six University units—six units of the University System? Does it include, for example, community colleges?

**DELEGATE HELIKER:** I can't hear you.

**DELEGATE BERG:** Does it include community colleges as well as units of the University System?

**DELEGATE HELIKER:** Mr. Champoux says "Yes". Perhaps he should answer the question. I'm not acquainted with the situation of the community colleges, but it says "each unit", so I would suppose it would cover them. That would be my intention.

**DELEGATE BERG:** Will Mr. Champoux, then—will yield?

**DELEGATE CHAMPOUX:** I will yield.

**DELEGATE BERG:** Does—is a community college one of the units of the University System today?

**DELEGATE CHAMPOUX:** In answer to that question, no.

**DELEGATE BERG:** Then, is it covered by the accounting system as proposed in Mr. Heliker's budget?

**DELEGATE CHAMPOUX:** It would be the intent of that amendment to bring these under the control. They would be within the area of control by the amendment. And that's our intent.

**DELEGATE BERG:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** If I understand the language of this amendment, it is restricted to the units of the University System, and I suggest to you that there is no clear definition that community colleges are a part of the units of the University System. I would recommend that this amendment be amended so as to include other educational institutions.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I think the point is well taken, and I would therefore propose such an amendment to—or a change in my amendment to read "by each unit"—

**CHAIRMAN GRAYBILL:** Mr. Heliker. How about "each unit of the University System and other state-supported educations—higher educational institutions"? Is that what you're trying to say?

**DELEGATE HELIKER:** "—under the Board of Regents."

**CHAIRMAN GRAYBILL:** "—and other state institutions administered by the Board of Regents?"

**DELEGATE HELIKER:** That sounds all right to me.

**CHAIRMAN GRAYBILL:** All right. Mr. Heliker would like to amend his amendment so that it says, "an annual accounting of all income and expenditures by each unit of the University System and other state institutions administered by the Board of Regents." I think we can find out on voice vote if we allow—if we'll allow him to amend his thing. All those in favor of amending this—allowing Mr. Heliker to amend in this manner—say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Okay, that amendment is allowed, and now the Heliker amendment includes the last clause including the other state institutions.
Now, Mr. Driscoll.

**DELEGATE DRISCOLL:** Mr. Chairman. Can I ask a question of Mr. Champoux, please?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I yield.

**DELEGATE DRISCOLL:** Mr. Champoux. In your language on lines 18-19, I do not think that they will prevent the vo-tech centers, at some time in the future, coming under the Board of Regents.

**DELEGATE CHAMPOUX:** Is—and—what is your question, sir?

**DELEGATE DRISCOLL:** At some time in the future, the vo-tech centers may want to come under the Board of Regents. I don't think they're precluded from doing this by your language.

**DELEGATE CHAMPOUX:** No sir, they aren't, by the language.

**DELEGATE DRISCOLL:** Thank you.

**DELEGATE CHAMPOUX:** You bet.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President. The amendment that Mr. Heliker gave and which you read several times very rapidly has not been written down, and I would—

**CHAIRMAN GRAYBILL:** I'll read it again.

**DELEGATE HABEDANK:** I'd appreciate it.

**CHAIRMAN GRAYBILL:** In other words, you don't have the whole amendment, is that it? Okay. "The Legislature shall be given"—well, we're going to add it at the end of Section 11, either as a separate paragraph—or it doesn't matter. Anyway, we're going to add it to Section 11. "The Legislature shall be given an annual accounting of all income and expenditures by each unit of the University System, and other state institutions, administered by the Board of Regents." I'm not sure we need the comma after "University Systems". "The Legislature shall be given an annual accounting of all income and expenditures by each unit of the University System and other state institutions, administered by the Board of Regents." Do you have that, Mr. Habedank? Very well.
Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman. I agree with Mr. Garlington; the more detail we start putting into these articles, the more we, by implication, are going to exclude. We have a legislative audit in our Constitution now, and he will certainly demand and receive all this information. I think this is unnecessary. If you'll look ahead to Mr. Rygg's provisions—if you want this in the Constitution, he's provided for it in much more simple language, and very flexible; so that I'd speak in opposition to this amendment.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. I rise in opposition to the amendment. It does absolutely nothing more than to make a report to the Legislature or whatever other accounting department of state government that you make the report to. If you read carefully this section—if you'll read this Montana—this last edition of the *Montana Law Review*, if you read some reports by the University of Missoula, it will show you they can make all the reports they want to to the state departments of government, but there is not one thing in there that says that they must abide by any one of them. You've got examples in Utah and other places where these reports have been made, where the authenticity of the report has been questioned, that it has gone into court and the courts have ruled that the Board of Regents had the full authority, that the—any other department of government couldn't question whether the accounts should be paid or not. They had to pay it, and they had no authority to question it. So a report of this kind is valueless except to show where the money went. You can't question whether it's valid or not valid, and no part—no division of government, under this particular section, would have that authority.

**CHAIRMAN GRAYBILL:** Mr. Barnard. The Chair would merely observe that it says "an annual accounting". An accounting is an after-the-fact report.

**DELEGATE BARNARD:** Mr. President. (Inaudible) an annual accounting, and that's quite desirable, in a way, except that it accomplishes nothing because there's no authority on the people to whom the accounting is made to say whether it was authentic or not.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I have all of the time been insistent upon a audit, and I don't think this gives it to us. This gives us an audit by the institution. That's me auditing myself. It won't work. Delegate Brown points out that the Legislative Audit would do it. I don't know. Up here in line 17, we're talking about "which shall govern and control the academic, financial and administrative". "Financial" is going to govern it. I'm not so sure that the Legislative Audit can get its work done there. I don't think this amendment of Delegate Heliker does the job.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman. I'd like to say, first of all, that no one has asked me to speak on this, and I'd like to describe something to you that I know fairly intimately. My husband is Chairman of the Philosophy Department at the University of Montana, and I think you would agree with me that he's a quitely—or a highly paid person for the State of Montana. Perhaps I shouldn't say this, but he has been offered four chairmanships of other departments in the rest of the country. All four of them were more than what he is being paid now, and he has turned them down. Now, I consider, and I think a number of people who—in this room who have had children who have—of theirs who have worked with him—he's very competent at what he does, but at the same time, within his daily work, he has an enormous amount of paperwork to face. He has told me that every year it gets worse. Now, this is not talking about the point of view of the top of the University itself, but what happens to someone who is a professor in the system. With this increase in paperwork, it means that this is what he does more and more. The very requisitioning of a typewriter in his department becomes something that has consumed hours of his time. And the real question I want to ask is—this has to do with autonomy and also how funds of the University are spent—but do you really want him—does the State of Montana want him to do—to work at something he does very well? Or do they want him to spend this sizable amount of time, which increases with every year, requisitioning paper clips, typewriters, paper, and so forth, which is increasing? I would like to read from the *Eisenhower Report*—Mr. Champoux spoke about it the other day—but it expresses, better than I can, part of the problem which I think we should think about at this point. "For the greater part of the century, the relations between public institutions of higher education and state government have been marked by increasing anxiety. This tension has been more visibly and deeply felt by educators than by state officials. The point of departure for this development cannot, of course, be precisely fixed"—by the way, this was written in 1957, I think,—this *Eisenhower Report* that I'm reading from—but, generally speaking, it may be said to commence with the movement, beginning around 1917, to regroup state administrative units into a more centralized orbit and to bring them under tighter executive control." This won't take me very long. "The state budget office, beyond question, is now in a position to wield more actual or potential influence over higher education than any other state administrative agency. With the development of the executive budget, in state after state, the budget office has moved forward to a point where its recommendations can have a decisive effect on the judgments reached by both the Governor and the Legislature on appropriations for higher education. Other central control agencies that have brought closer supervision over the operations of state colleges and universities are state auditors, controllers, purchasing departments, personnel offices and central building agencies." Mr. Champoux talked about this with the motor pool kind of thing. "Potentially, at least, the entrance of these new controls represents a grave threat to the tradition of free colleges or universities in America, for in their zeal to apply controls over higher education in the name of economy and tidy administration, some state officials have forgotten the compelling reasons that led to the grant of legal autonomy to institutions of higher education. With the steady advance of state controls, the legal independence of higher education in many of the states now stands in serious danger of erosion. The educator understands the rationale between—behind the steady increase in executive as well as legislative agencies of centralized oversight. He recognizes that the centralized controls have been prompted by the obviously sound purposes of economy and efficiency and that they have come about in response to urgent public demand and need. He despairs, however, of what he believes is the tendency of state officials to look at university life solely from the vantage point of fiscal procedures. Education is intricate in design and ancient in lineage. It cannot be viewed merely in terms of unit costs, rigid personnel requirements, and audit exemptions. Moreover, the tendency of all topside controls is to squeeze the sovereignty of the college in the conduct of its vital responsibilities in teaching research and the selection of distinguished personnel, as well as the procurement of intricate laboratory equipment. The educator pleads that central controls should not be imposed over any college in such a way as to jeopardize the performance of its essential functions. In short, educators agree that the Legislature and and Governor, acting through the Budget Office, have clear authority to decide the initial questions of what portion of a state's economic resources should be committed to higher education. This decision is immovably a political one, and, under a democratic system, it must be made by elected representatives in response to the public will. But the second phase of fiscal control, the expenditure and internal allocation of state funds once they have been appropriated, is another matter. Here, educators are convinced that once the Legislature has spoken, fiscal control thereafter should be the responsibility of the college or university itself. It is this principle of fiscal responsibility—if this principle of fiscal responsibility is accepted, then college officials believe that the schools will not be impaled on controls that not only frustrate day-to-day operation, but on occasion, threaten to decline in standards and quality at the institution itself." Thank you very much. Did I say in the beginning no one asked me to read this? This is on my own. Thank you very much.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. Mrs. Bugbee's comments are all well and good but are not directly pertinent to the problem before us right now. Now, as I said, what I wanted to get at was an absolute guarantee that the institutions under the Board of Regents would be subject to the Legislative Audit. Apparently, the language that I offered was not sufficient to that purpose. It came from the Michigan Constitution, and I took it from the Michigan Constitution because Michigan has the kind of autonomy for the Board of Regents that we are seeking here in the majority proposal. If I may, I'd like to withdraw my amendment and substitute other language which will, I think, be clearer and get to the point that I want to get to.

**CHAIRMAN GRAYBILL:** Now, Mr. Heliker, tell me what you want to do. You want to withdraw your entire amendment?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE HELIKER:** And to substitute for it, the following language.

**CHAIRMAN GRAYBILL:** Can you tell me where you're getting the following language?

**DELEGATE HELIKER:** Yes, the following language comes from the last sentence of the substitute amendment that you have before you, signed by Mr. Rollins.

**CHAIRMAN GRAYBILL:** Well, you can certainly do that. Mr. Rollins hadn't had it printed, and I just sent it out to printing. And I really don't want to—we'll do it, but I guess we'll wait for printing. Well, you can go ahead.

**DELEGATE HELIKER:** Well, it's a short sentence and very clear, I think. "The funds and appropriations under the control of the Regents shall be subject to the same Legislative Audit provisions as any other funds of the state."

**CHAIRMAN GRAYBILL:** Very well. I've allowed you to withdraw your other one, and I'll allow you to make this amendment, but I will caution the group that Mr. Rollins has a Section 11 proposal of which that's only part. It is more—has a lot of other material in it. And I'm having it printed, and we'll get it up here as fast as we can. Yeah, I've got it; but it's just a matter of everybody else doesn't have it, Rick. I'll read it again in a minute. The amendment that Mr. Heliker now wants in place of his is: "The funds and appropriations under which"—No—"The funds and appropriations under the control of the Regents shall be subject to the same Legislative Audit provisions as all other funds of the state." Now, in about 5 minutes, everybody will have that on his desk, because it's now in printing.

Go ahead, Mr. Heliker. Do you want to speak to your amendment?

**DELEGATE HELIKER:** No, Mr. Chairman, except to say I hope it now satisfies everyone that the funds administered by the Board of Regents will be, indeed, subject to a legislative audit as all other agencies' funds are.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. Will Mr. Heliker yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Heliker, will you yield?

**DELEGATE HELIKER:** Yes.

**DELEGATE BLAYLOCK:** George, what does this add that isn't already in effect?

**DELEGATE HELIKER:** I'm not sure it adds anything. I have pointed out that we have adopted a Legislative Audit. It is my understanding that that would apply to the Board of Regents; however, there has been some fear expressed that it wouldn't. I—my object here is to nail this down 100 percent certain that it would.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. I think what concerns some of us is the fact that Section 11 is providing for a body corporate, and, of course, that has certain legal ramifications that are rather important in determining whether or not we should vote for Section 11 precisely as it appears before this body at this time. I should think that the majority of the delegates certainly support the principle of academic freedom, but on the other hand, we want that academic freedom to be compatible with the demands of a contemporary society. And as a consequence, it would be, I should think, the judgment of a good number of the delegates that we want the Board of Regents of Higher Education, if it becomes a body corporate, to still be responsible to the people of this state. And I'm opposed to the amendment that's presently before this body for the reason that I think we have before us a—an amendment proposed by Delegate Rygg that provides that the powers and duties over financial and administrative affairs shall be prescribed and regulated by law, which I think is the type of balance that must be included in any type of provision if we're to have the type of public control that I think must be in any provision that we pass. And for that reason, I'm opposed to the amendment that's before this body.

**CHAIRMAN GRAYBILL:** The Chair would like to announce that as soon as the printing is finished, we'll get Mr. Rollins' amendment out and we'll get—we'll ask the others whether they want theirs out. And if they—we'll get them all out here, and then we'll discuss them all at once.

Mr. Champoux.

**DELEGATE CHAMPOUX:** If I may react to the comments of Mr. Dahood?

**CHAIRMAN GRAYBILL:** You may.

**DELEGATE CHAMPOUX:** One of the problems there, Wade, is that it doesn't get at this business of internal control by the universities, as I see it. Now, if you'll look at—we're not discussing Mr. Rygg's, of course—but if you notice what he has in here, "prescribed and regulated by law", it's going to get back to the same situation as you have in the present Constitution where, under 11, it says "The general control and supervision of the State University is vested in this board." Yet, in the very next sentence, Wade, its says, "whose powers and duties shall be prescribed and regulated by law." See—this, then, gets the state government again and bureaucratic—or I won't use that word anymore—governmental bureaus involved, possibly, in things like hiring and firing of faculty, determination of, you know, what kind of pianos you're going to buy, whereas specialists say something else. This is the problem.

**CHAIRMAN GRAYBILL:** All right, now, the Chair would like to inquire of Mr. Rollins if you want your amendment passed out. Yes or No?

**DELEGATE ROLLINS:** Yes, I would appreciate it.

**CHAIRMAN GRAYBILL:** Very well. We'll pass yours out.

Mr. Toole, do you want yours passed out?

**DELEGATE TOOLE:** I would prefer to have mine wait, Mr. Chairman.

**CHAIRMAN GRAYBILL:** All right, we'll hold yours.

Mr. Barnard, do you want yours passed out?

**DELEGATE BARNARD:** (Inaudible)

**CHAIRMAN GRAYBILL:** All right. Pass out Rollins' and Barnard's.

Mr. Martin, do you want yours passed out?

**DELEGATE MARTIN:** (Inaudible)

**CHAIRMAN GRAYBILL:** Yes, Mr. Martin's passed out. I understand you have Mr. Rygg's before you.

Mr. Harper, I haven't printed yours yet. Do you want it printed?

**DELEGATE HARPER:** (Inaudible)

**CHAIRMAN GRAYBILL:** Okay. Very well. We'll pass out Rollins', Barnard's, and Martin's. And you have Mr. Rygg's before you, and Mr. Toole is not passing his out. Let's just wait a minute till the passing out is done here. Mr. Heliker, the Chair would like to inquire whether you want to keep your last sentence of Mr. Rollins' separate. In other words, you want that as a separate proposal, is that right? Yes?

**DELEGATE HELIKER:** Yes. Yes.

**CHAIRMAN GRAYBILL:** Yes. Okay. Will the committee please be in order.

Mr. Barnard, for what purpose do you rise?

**DELEGATE BARNARD:** Mr. President, a point of information. I have one proposed substitute in for Number 11, but I also have a very short amendment which I might like to submit prior to that time. Would that be permissible?

**CHAIRMAN GRAYBILL:** Well, is it an amendment to your amendment? Or is it—

**DELEGATE BARNARD:** No, it would be an amendment to Section 11.

**CHAIRMAN GRAYBILL:** Well, let me show you how I think we're going to get at this, and then we'll see—you can see. I—you'll certainly have a chance sometime to put it in, especially if Section 11 survives. Now, if I may have your attention, you have before you an amendment by Mr. Heliker, and in keeping with the rule of only three layers, we're going to have to work around this a little here. Mr. Heliker's amendment—if you want to make notes—is the present Section 11 plus one sentence concerning fiscal responsibility—being—concerning the fact that the funds would be subject to a legislative audit, plus one sentence on the legislative audit, which happens to be the last sentence of Mr. Rollins' proposal. All right, now, Mr. Rollins has a proposal, which I presume he'll make in a moment, which has the effect of removing "the body corporate"—isn't that correct, Mr. Rollins?—from the language of Section 11 and otherwise provides for the Board of Regents with this legislative audit on the bottom. In other words, it's no "body corporate", plus a legislative audit. Then, Mr. Barnard has a proposal which also deletes the legislative audit—also deletes "the body corporate", but places the Regents in a position of operating the University System as a public trust in a manner consistent with the general laws and includes limitations on the legislative authority to change this system. Now, those three would fill up the docket. But, then, Mr. Rygg has one which has the effect of being Section 11 with a sentence that says, "Powers and duties over fiscal and administrative affairs shall be prescribed and regulated by law." In other words, it would place the fiscal control of the Board of Regents back in the Legislature. Those four proposals are before us, and possibly some minor amendments that might come up. At this time, I would—we already have Mr. Heliker's amendment, Section 11 plus the last sentence of Rollins'.

Mr. Rollins, I would entertain a motion to amend that by adding your Section 11. And after you've spoken, I would entertain a motion from you, Mr. Barnard, to put a substitute motion. And that would get your three before us, and then we can get Mr. Rygg's before us if we ever get there.

**DELEGATE ROLLINS:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Rollins.

**DELEGATE ROLLINS:** At the time you were speaking about me, someone else came to speak with—to me. Would you say that again, please? The—

**CHAIRMAN GRAYBILL:** Mr. Rollins, is there any question which one you're going to listen to now? I'm just kidding you. Mr. Rollins, would you like to move your Section 11 as an amendment to Mr. Heliker's motion?

**DELEGATE ROLLINS:** Yes, Mr. President. I move that my amendment be read as an amendment to Mr. Heliker's.

**CHAIRMAN GRAYBILL:** All right. Will the clerk please read Mr. Rollins' amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend the Heliker amendment by adding the following language before his sentence. Section 11: 'The government and control of Montana's University System shall be vested in a Board of Regents, who shall be selected as provided herein. The Regents shall have full power, responsibility and authority to supervise management and control of the Montana University System and shall supervise and coordinate other public educational institutions which may be assigned by law. Said Board shall consist of seven members, appointed by the Governor to overlapping terms, subject to confirmation by the Senate, under regulations provided by law. The Board shall appoint its Executive Officer and describe his term and duties. The Governor and the Superintendent of Public Instruction shall be ex officio nonvoting members of this Board. The Regents shall present a unified budget request to the Legislative Assembly. Signed: Rollins."

**CHAIRMAN GRAYBILL:** And then, Mr. Rollins' does, of course, incorporate the rest of that sentence there, because it's an amendment to Mr. Heliker's. So, it does have "The funds and appropriations under control of the Regents shall be subject to the same Legislative Audit provisions as other funds of the state." Is that correct, Mr. Rollins?

**DELEGATE ROLLINS:** Yes, Mr. President. I'd like to speak to that a moment please.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE ROLLINS:** In proposing this amendment, I'm trying to achieve certain things and to avoid certain types of objections. I'm trying to achieve a Board of Regents that has the essential powers to carry on the work of the University System and such other educational institutions as might be assigned by law to that Board of Regents. And in my opinion, the major duty of the—of higher education is education. And the only reasons why there should be administrative controls would be to make it so that it can carry out its primary task, with the additional need for accountability to the people who support it. So, I think that this amendment indicates a Board of Regents with the power to make the necessary decisions to conduct higher education. I am willing to sacrifice the idea of body corporate. Like the feller said, "I didn't understand it too well anyway," and apparently many others don't. And it's a bone of contention, and I think it's an old, dry, dead bone—maybe not worth chewing on for a considerable length of time. There are those who've expressed fears that there would be not—not be fiscal responsibility. Under this, I don't see how it could be escaped in any way, because the appropriations are made by the Legislature. And the University System—or the system of higher education would be subjected to the Legislative Audit. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, Mr. Barnard, may the clerk read your amendment?

**DELEGATE BARNARD:** Mr. President, first I would like to ask Mr. Rollins a question, if I might, please?

**CHAIRMAN GRAYBILL:** Mr. Rollins, will you yield?

**DELEGATE ROLLINS:** Yes, sir.

**DELEGATE BARNARD:** Was your intention in the last wording of your—It says "legislative audit provisions as all other funds of the state". I have a question I want to ask you. Presuming that we have a legislative audit of the University System and they find something is wrong; is your intention, then, that they would have authority to straighten that out, that the Legislative Audit Committee would?

**DELEGATE ROLLINS:** Surely; I would say so.

**DELEGATE BARNARD:** And it's your intention that they would have that authority in this statement you've made here?

**DELEGATE ROLLINS:** Well, Mr. Barnard, I can't say exactly what powers the Legislative Audit does have. I assume that if the Legislative Audit finds something, that there are—there's a mechanism to set things right. The University System would be subject to the same kind of action as would any other funds that the state supervises.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** May I ask another question?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE BARNARD:** My problem is, here, I'm a little bit worried about this thing, because there have been so many court decisions in other states on this very same subject where, even after an audit, the party—or the group conducting the audit or no other state agency had any authority to correct it, excepting the Board of Regents. That's my question, and that's the thing I don't want to see. I want to see somebody have some authority besides the Board of Regents. That's why I asked the question.

**DELEGATE ROLLINS:** It certainly wouldn't be my intention with this that the Board of Regents would defy the Legislative Audit in any way. I assume the Legislative Audit makes a report to the Legislature and is subject to any action that mechanics demand.

**DELEGATE BARNARD:** That's all, Mr. President.

**CHAIRMAN GRAYBILL:** All right. Now, Mr. Barnard, do you care—do you want to put your amendment?

**DELEGATE BARNARD:** That is the amendment to the Section 11?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE BARNARD:** Yes, I could put my proposed amendment to Section 11. I have two copies I've just handwritten. Do you want one of them up there or—

**CHAIRMAN GRAYBILL:** No. What I'm interested in—you handed up, a long time ago, a full Section 11 amendment which I had printed and spread. Do you want to make that amendment or don't you?

**DELEGATE BARNARD:** Well, I didn't want to make it at this particular time, but I will if—

**CHAIRMAN GRAYBILL:** No, now—I'm not trying to urge you to. I just want to know what you want to do.

**DELEGATE BARNARD:** Oh, I'd rather let it go for a little while.

**CHAIRMAN GRAYBILL:** All right, we'll let it go.

Mr. Rygg, that leaves a slot open for yours. Would you like to make yours?

**DELEGATE RYGG:** No, I'd just as soon—I'm content with Rollins'. If that one goes through, why, that's fine. Otherwise, I'd want mine, but I'm willing to vote on this one.

**CHAIRMAN GRAYBILL:** All right. This is a hard bunch to manage. (Laughter) May I merely point out to the body that you have these others before you; and I'm perfectly willing that we debate the whole thing at once, because I don't see how we can debate it except all at once. And at the moment, then, we have Mr. Heliker's motion, which is Section 11 with "the body corporate" and the sentence on the bottom about the legislative audit. And we have Mr. Rollins' amendment, which is Section 11, somewhat modified, without "the body corporate" and with the language on the bottom. Which, I think, puts us in the position of debating "the body corporate".

Now, Mr. Champoux.

**DELEGATE CHAMPOUX:** I think Mr. Rollins' amendment kind of takes in pretty much all of it. "Body corporate" is kind of like "public trust" around here, and I'm really afraid if we bring that up, Mr. Brazier is going to get up and talk again. (Laughter) And I like Jeff and—So, I would accede to Mr. Rollins' amendment, and I think it takes in everything. I would support it. Thank you.

**CHAIRMAN GRAYBILL:** Very well, Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I'll withdraw my amendment. I'll support Mr. Rollins' substitute.

**CHAIRMAN GRAYBILL:** All right. Heliker's second one is withdrawn. Okay.

**DELEGATE HELIKER:** Do I still have the floor, Mr. Chairman?

**CHAIRMAN GRAYBILL:** You may have the floor.

**DELEGATE HELIKER:** I'd just like to say that what I'd like to see achieved is a Board of Regents with the power to manage the University System. I want to see them fully accountable to the Legislature, and I think we should bear in mind that they will have to present a unified budget, with the Board of Public Education, to the Legislature. The Legislature will appropriate the funds. The use of those funds will be audited by the Legislature. The Legislature will know exactly how they're used, and then the Board of Regents will have to go back before the Legislature the next time around. So, it seems to me, you have full and complete legislative control under Mr. Rollins' proposal without sacrificing the necessary, it seems to me, ingredients of managerial authority on the part of the Board of Regents.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman. Since Mr. Rygg has withdrawn his amendment and since our Honorable Chairman supports Mr. Rollins' amendment, I will withdraw my amendment. And this, perhaps, will speed things along a bit.

**CHAIRMAN GRAYBILL:** All right. Yours isn't in yet, but you can withdraw it without it being in.
Mr. Loendorf, I guess you were up next.

**DELEGATE LOENDORF:** Mr. Chairman. Would Mr. Rollins yield?

**CHAIRMAN GRAYBILL:** Mr. Rollins?

**DELEGATE ROLLINS:** I yield.

**DELEGATE LOENDORF:** Mr. Rollins, I have no particular opinion on your amendment, I guess. I'm just concerned about one thing. The second-to-last sentence provides "The Regents shall present a unified budget to the Legislative Assembly." It seems to me, Saturday, in Section 9, we had the Regents and this other board operating together and presenting a unified budget to the Legislative Assembly. Do you have a problem here? Are you in conflict with Section 9 now?

**DELEGATE ROLLINS:** Perhaps we are. That part of it could be either amended or deleted to make it in line with Section 9.

**DELEGATE LOENDORF:** That's up to you. I have no opinion, as I say.

**DELEGATE ROLLINS:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Rollins.

**DELEGATE ROLLINS:** I would like, from my proposal to delete the sentence which says, "The Regents shall present a unified budget request to the Legislative Assembly" because that's already covered in Section 9.

**CHAIRMAN GRAYBILL:** That's what we did the other day.

**DELEGATE ROLLINS:** Yes.

**CHAIRMAN GRAYBILL:** So, you want to delete that sentence?

**DELEGATE ROLLINS:** Yes, sir.

**CHAIRMAN GRAYBILL:** All in favor of letting Mr. Rollins delete that, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** All right, Mr. Rollins, that's deleted.
Now, Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman. Would Delegate Rollins yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Rollins?

**DELEGATE ROLLINS:** I yield.

**DELEGATE ARBANAS:** In the sentence where you talk about the Executive Officer, you know, being appointed by the Board of Regents, would we do better to actually name him the "Commissioner of Higher Education", because there's some possibility, in reading the two sections, he might come out as two different people. I wonder if that should be seriously considered?

**DELEGATE ROLLINS:** In the interest of consistency, Mr. Arbanas, I would say that that should be done. That could be changed to say "The Board shall appoint a Commissioner of Higher Education and prescribe his terms and duties." Mr. Chairman, may I make that correction?

**CHAIRMAN GRAYBILL:** Would you state it again, please?

**DELEGATE ROLLINS:** "The Board shall appoint a Commissioner of Higher Education and prescribe his term and duties."

**CHAIRMAN GRAYBILL:** All right. If we want to do that, now, let's see. "The Board shall appoint a higher—a Commissioner of Higher Education".

**DELEGATE ROLLINS:** Yes, sir; "and prescribe his term and duties".

**CHAIRMAN GRAYBILL:** And strike out "its Executive Officer".

**DELEGATE ROLLINS:** Yes.

**CHAIRMAN GRAYBILL:** Mr. Rollins now wants to amend his Section 11 to say "The Board shall appoint a Commissioner of Higher Education." In other words, naming the Executive Officer the same name that we adopted in Section 10 a few minutes ago, and strike the words "it's Executive officer" so the sentence reads: "The Board shall appoint a Commissioner of Higher Education and prescribe his terms and duties." Does anyone care to discuss that proposed amendment?

**DELEGATE BERG:** (Inaudible)

**CHAIRMAN GRAYBILL:** Thank you, Mr. Berg. Mrs. Bowman wishes to discuss it.

**DELEGATE BOWMAN:** I must ask a question, because I'm getting more confused as the morning progresses.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Is the Commissioner of Higher Education in Section 11 going to be the same person as in Section 10, or are each one of these boards going to have a Commissioner of Higher Education?

**CHAIRMAN GRAYBILL:** The same person, Mrs. Bowman.

**DELEGATE BOWMAN:** Thank you.

**CHAIRMAN GRAYBILL:** Very well. Is there other discussion of changing the line that says "its Executive Officer" to "a Commissioner of Higher Education"? If not, all in favor of that amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** All right, that amendment will be allowed. We may have discovered a new way to do this.

Mr. Rygg.

**DELEGATE RYGG:** (Inaudible)—a point of clarification. Mr. Toole said I'd withdrawn my amendment. I didn't do that. I said I was willing to have you vote on his first, but I haven't withdrawn it yet. This is just a point of verification.

**CHAIRMAN GRAYBILL:** Right. Okay, I'm with you, Mr. Rygg.

Now, Mr. Mahoney, you're next.

**DELEGATE MAHONEY:** Would Mr. Rollins yield to a question?

**DELEGATE ROLLINS:** I yield.

**CHAIRMAN GRAYBILL:** Mr. Rollins.

**DELEGATE MAHONEY:** In looking this over, Mr. Rollins—and I haven't had a great long time to study it, because you've got a lot of things in it—would this now remove the Department of Administration and the Department—and the Budget Director entirely from having anything to do over the Board of Education?

**DELEGATE ROLLINS:** I wouldn't say so, Mr. Mahoney, but I don't know exactly what the relationship would be, because I don't know what it is right now.

**DELEGATE MAHONEY:** Mr. Chairman, I'd like to talk a little on this.

**CHAIRMAN GRAYBILL:** Mr. Mahoney, you have the floor.

**DELEGATE MAHONEY:** In my humble opinion—and I'm not a lawyer and, remember, I don't have any qualifications—but I can see this as we've taken away, now, from the Governor all charge of the Legislature of the pair—by having these terms. We're going to have them overlapping—six, seven members appointed by the Governor—overlapping terms. So, now the new Governor comes in and he has new ideas, and we're going to let him sit in there ex officio, nonvoting. I don't know what he'll do. Maybe if he's nonvoting, he can take out the ashtrays or do some sweeping or something like that. That's about all he can have under this "ex officio nonvoting member". He don't have anything to say. Now, we take him out—the Board of Education or the Board of Regents—from under the Budget Department of which—and also under the Department of Administration. I don't know what the Governor is going to have to do with this. So it'll all be under the Legislature, and I'm not too sure that we shouldn't have some executive control over the Board of Education besides the overlapping appointment of 6-year terms or six or seven members.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Mahoney. Last Saturday, I went into great detail as to what the current situation is in terms of things like architecture, state warrants, the treasury system, investments, and so forth. I indicated, for the record, that these—many of them will not change. Now, if you want to look at the situation in North Dakota, which, incidentally, just passed a provision similar to ours but that has been in force in North Dakota since 1931. Now, if you look at the situation there in North Dakota, what happens? The university funds are kept in the state treasury. Preauditing occurs on travel vouchers, annual legislative audit. The University System goes through—the University goes through the Budget Bureau of the Investment Bureau. They issue reviews of salaries—the Executive does. The Executive reviews fees in the general budget. After all, the general budget, Charley, as you well know, has to go through the Governor's office. It's involved in a uniform accounting system. The University System indicates to us that they're going to involve themselves in the state system simply by developing a program that will fit into the state system. The central purchasing presently—it doesn't seem to me that the University System, under this control, would ever get out of it. There are some instances, however, like the pianos and certain great detailed instruments that they would, perhaps, want to purchase on their own. Central financing is provided for the reporting of it under this legislative audit. We have all kinds of control, plus the Governor sits on two boards that are involved in it, and he also names the members. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Reichert, you've been up—

**DELEGATE REICHERT:** Mr. Chairman. Will Mr. Champoux yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** Yes.

**DELEGATE REICHERT:** I noticed in Mr. Rollins' amendment that he deletes any mention of time for this overlapping term. In your majority proposal, you do stipulate, on line 21, page 6, "6-year overlapping terms". Do you—does your committee have any strong feelings? Frankly, I support Mr. Rollins.

**DELEGATE CHAMPOUX:** Thank you very much for bringing that to my attention. I missed it. I think we ought to put in "6 overlapping years". I think George would agree to that—"six overlapping terms"—I'd suggest we put that in.

**CHAIRMAN GRAYBILL:** Well, we know what you want. We'll let George speak for himself. (Laughter)

Mr. Rollins.

**DELEGATE ROLLINS:** Mr. Chairman. I'm getting like the preacher that said it happened so long ago and so much had happened, he didn't know whether Lazarus came fourth or fifth. (Laughter) And I—part of the trouble is I didn't do my homework as thoroughly as I should. If I may do it, I should like to insert, after the word "appointed by the Governor to", "6-year overlapping terms".

**CHAIRMAN GRAYBILL:** Very well. Mr. Rollins wants to amend his amendment to include "6-year overlapping terms" instead of just plain "overlapping terms". Is there discussion of that issue?

Mrs. Reichert, you've discussed it.

**DELEGATE REICHERT:** Mr. Chairman. I thought Mr. Rollins had intentionally deleted "6-year overlapping terms". I had considered deleting that from the majority proposal. (Laughter)

**CHAIRMAN GRAYBILL:** You want to speak against Mr. Rollins' proposed amendment?

**DELEGATE REICHERT:** Yes, in—because I feel we need a flexible Constitution. I would dislike seeing "6-year overlapping terms" written into our Constitution. I think that that following phrase of the same sentence, "under regulations provided by law", would mean that the Legislature could set these terms.

**CHAIRMAN GRAYBILL:** Well, at the moment, Mr. Rollins is setting it at 6 years. Is there discussion? Very well. So many as are in favor of "6-year overlapping terms", say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as are opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. So many as are in favor of 6 years, vote on the machines Aye; and if you're not in favor, vote No. Has every delegate voted?
(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote? Any other delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** Very well. Take the ballot. This was not a roll call. I beg your pardon; 46 have voted No and 42 have voted Aye, so the 6 years are out at the moment—46 to 42.
Mr. Berg, you were up.

**DELEGATE BERG:** Will Mr. Rollins yield to a question?

**DELEGATE ROLLINS:** I yield.

**DELEGATE BERG:** Mr. Rollins, I like your amendment, but I have some problems with regard to the second sentence, which reads: "The Regents shall have full power, responsibility and authority to supervise, manage and control the Montana University System." Now, I understand that that would relate to the six units of the University System. But as to other educational units, it has only the power to supervise and coordinate. Did you intend, by this amendment, to distinguish the authority which the Board of Regents would have over the University System as it might have over, for example, community colleges?

**DELEGATE ROLLINS:** Yes, Mr. Berg, because I think there is a difference.

**DELEGATE BERG:** Did you—

**DELEGATE ROLLINS:** The community colleges have some local direction which the units of the University System would not have. There's also a sharing of funds there, involving local concern—consideration. So, I think that that's what I'd like to see.

**DELEGATE BERG:** Would he yield to a further question? Mr. Rollins.

**DELEGATE ROLLINS:** Yes.

**DELEGATE BERG:** Did you deliberately leave out the word "coordinate" as it refers to the six University Systems?

**DELEGATE ROLLINS:** No, not deliberately, but I—that could be under the "full power and responsibility".

**DELEGATE BERG:** Would you object to an amendment which would include "coordination" of the University Systems?

**DELEGATE ROLLINS:** Not at all. I would not object.

**DELEGATE BERG:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I move to insert, between the words "supervise" and "manage", the word "coordinate", so that the sentence reads: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the Montana University System."

**CHAIRMAN GRAYBILL:** Very well. Mr. Berg has proposed an amendment to Mr. Rollins' amendment. It's on line 4 of the printed amendment before you; he wants to add the word "coordinate", so that it reads: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control—" Is there further discussion?
Mr. Davis.

**DELEGATE DAVIS:** Would Mr. Berg yield to a question, please?

**DELEGATE BERG:** I yield.

**DELEGATE DAVIS:** Mr. Berg, for the purposes of the record on this article, when it goes out of here, regardless of how it goes—Under that language, you think it would be possible for the Board of Regents to close Western Montana College of Education if they thought they wanted to?

**DELEGATE BERG:** No, I don't. I think they could coordinate its functions and see to it that the educational program provided at Dillon corresponded with what was provided at Bozeman.

**DELEGATE DAVIS:** And that would, likewise, apply to any other units of the system?

**DELEGATE BERG:** Yes.

**DELEGATE DAVIS:** I want that clearly in the record, though, because some of the members of the public are going to be concerned about that. Thank you.

**DELEGATE BERG:** I don't think that the word "coordinate" changes it in any sense.

**CHAIRMAN GRAYBILL:** Are there other questions or is there other debate on Mr. Berg's amendment to add the word "coordinate"? All in favor of Mr. Berg's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. All right, we're back on Mr. Rollins' proposal.
Mr. Nutting.

**DELEGATE NUTTING:** Would Mr. Rollins yield to a question?

**DELEGATE ROLLINS:** I yield.

**DELEGATE NUTTING:** In your last sentence, where you say "subject to the same legislative audit provisions", would you object to removing the word "legislative"? I think that is restrictive in that we now have an executive audit, too, that does part of the work on the—So, that would then read: "subject to the same audit provisions as all other funds." So then, it would take in both provisions.

**DELEGATE ROLLINS:** Mr. Chairman. May I answer that question by asking Mr. Nutting one?

**CHAIRMAN GRAYBILL:** If Mr. Nutting will yield.

**DELEGATE NUTTING:** Yes.

**DELEGATE ROLLINS:** Would all of these—are all of these other funds now subject to the legislative audit?

**DELEGATE NUTTING:** The legislative audit and the executive audit both working—are working and coordinate in different areas.

**DELEGATE ROLLINS:** I would not object, then, Mr. Nutting.

**CHAIRMAN GRAYBILL:** Mr. Nutting. Let's make—it makes my bookwork a little easier. Do you want to make that amendment, Mr. Rollins?

**DELEGATE ROLLINS:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE ROLLINS:** I move to amend the last line of my proposal by striking the word "legislative".

**CHAIRMAN GRAYBILL:** Very well. Is there discussion? All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Very well. It just means that only you are doing this and I don't have to start another amendment. Mr. Nutting, have you other questions?
Mr. Skari.

**DELEGATE SKARI:** Mr. President. Would Mr. Rollins yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Rollins?

**DELEGATE ROLLINS:** I yield.

**DELEGATE SKARI:** Mr. Rollins, where you—we inserted "Commissioner of Education" in here and we struck "who shall act as Executive Officer". I know that you intend that he shall act as the Executive Officer. Do you see any problem? It seems to me it could be a little unclear here, that it doesn't—We have put the title in here; we haven't clearly expressed his duties. I'm sure that you intend that he be the Executive Officer of the Board.

**DELEGATE ROLLINS:** Mr. Skari, I don't think I did, necessarily. I think the term "as prescribed by the Board" should cover that. The Board may wish to assign him some other kinds of duties.

**DELEGATE SKARI:** Thank you, Mr. Rollins.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman. May I ask Mr. Champoux a question?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I yield.

**DELEGATE BUGBEE:** Does striking the word "legislative" mean that we get into the same kind of proposition we did with that science complex, that everything then comes under the Executive? Every paper clip has to go through the Executive Department, every typewriter, every everything?

**DELEGATE CHAMPOUX:** I'm glad you brought that question up. Actually, it may; it might very well happen that way. Now, if it's the intent of this body that that do happen, maybe we should get it on record. As far as I'm concerned, it shouldn't happen, and that's what I was speaking against Friday—Saturday.

**DELEGATE BUGBEE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** The Chair would like to observe that you're talking about audit now. You're not talking about appropriation. The last sentence refers only to audit. And if you understand that and everybody does, fine, go ahead.

**DELEGATE BUGBEE:** It says, "Funds and appropriations under the control of the Regents shall be subject to the same audit provision."

**CHAIRMAN GRAYBILL:** Audit has nothing to do with appropriation. And if some of the legislators would like to explain that—the Chair doesn't want to, but the Chair doesn't intend to speak—but I'm sure some of the legislators that have been on the board will explain that to you. This is after-the-fact control, the audit.

Mr. Rygg.

**DELEGATE RYGG:** I'm sure this doesn't present a problem, Mrs. Bugbee, because this is strictly an audit and that would have nothing to do with the way it's spent. This is when it comes in afterwards, and they want to audit what has done, but it would have nothing to do with the purchasing of it.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** I would just like to—I don't understand the internal mechanisms of this, obviously, but I am very concerned about that Highway complex and how that thing got meshed into all of the state government and the mess it was in because of the way it was tied together.

**CHAIRMAN GRAYBILL:** Mr. Champoux, you're up. Would you like to speak?

**DELEGATE CHAMPOUX:** Would Mr. Nutting yield to a few questions, please, sir, for the record?

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** (Inaudible)

**DELEGATE CHAMPOUX:** Mr. Nutting, is it your intent that all of the units under this Board of Higher Regents—that they channel all of the purchasing and so forth, through the Administrative Division of this government?

**DELEGATE NUTTING:** Audit merely is after the fact, and that's what we're discussing in this last sentence. The funds and appropriations and the methods of establishing would be altogether different. They would not be—it—after the fact. They would be established beforehand.

**DELEGATE CHAMPOUX:** May I ask another question?

**DELEGATE NUTTING:** Yes.

**DELEGATE CHAMPOUX:** What—why do you feel that we need two audits? We have one from the Legislature—you want to—is it a double-check or—

**DELEGATE NUTTING:** It's in now, and it is—not that it's particularly good, but that is the way, and I do believe that the Governor has a right to audit the Executive Departments. They are his departments, and he should have somebody to look after them for him. The Legislative Audit is merely—operates in—on behalf of the Legislature, so you—both audits are really needed.

**DELEGATE CHAMPOUX:** Thank you, sir.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. We spent considerable time with the Legislative Auditor and also the head of the Department of

Administration to find out what was the nature of their work. The Legislative Audit has no executive or administrative authority. The only thing that he does is call it as it is, turn it over to his committee, and then the committee turns and asks the institutions which are audited to make a report back. And on the basis of that, they try to get compliance with the law. For instance, just to give you an idea of what the Legislative Audit did in—with respect to its audit of the University units, it came up with a number of recommendations. And I'll just take—quote briefly from the executive—or the Legislative Auditor's report with regard to the University units: One, was to transfer bank balances to appropriate funds in the State Treasury and deposit future receipts therein promptly upon their receipt; two—implement a formal—these were recommendations—a formal system of documenting the time expended by faculty personnel in the nature of their services; three, convert the University units' payroll to the central payroll system; four, establish more precise regulations regarding consulting fees, honorariums, and so forth, earned by University unit personnel; five, the State Controller establish an account in the appropriate treasury fund to receive, hold, and disburse all moneys available for general support operations for each University unit; six, collect administrative cost reimbursements and deposit the collective as—collections as revenue in the general fund to the extent the costs were involved in appropriated moneys; seven, seek legislation to provide the statutory authority for waiver or reduction of fees in those circumstances where such waiver or reduction is in the best interest of the state; eight, establish a uniform University accounting system which meets management's needs and is compatible with the statewide system currently in operation. With regard to the University fees, the Legislative Auditor's report found that over $625,000 in fees were waived by the University during fiscal year 1969 and 70. Of this amount, $525,877 in fees were waived under circumstances which are not specifically authorized by law. The Department of Administration has—is in the process of implementing an accounting in the budget system, and the Legislative Audit is just reporting the facts as they are. I think that they're—anyone that knows something about the competition that exists between the University units, how one president at one time has been in supremacy and the other president has been again, you could find reasons for the Legislature to be concerned and the Executive Department to have some concern for some sort of a coordinated policy on this proposition. In my opinion, I think that we shouldn't turn around and give and delegate all of the powers to a Board of Regents or to a Commissioner of Education.

**DELEGATE CHAMPOUX:** I'd like to ask Mr. Nutting one question, for the record, please.

**DELEGATE NUTTING:** Yes.

**DELEGATE CHAMPOUX:** If I may, sir. Now, just to clarify this, if I may, when you said "after the fact", you do not—you mean "post audit". Is that correct, sir? You do not mean "pre-audit".

**DELEGATE NUTTING:** That's what an audit discussion is, right.

**DELEGATE CHAMPOUX:** Thank you very much, sir.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. I am a little bit perturbed here—or worried or whatever the word that we could use—disturbed—yes, maybe that's good. When we get down here in this line that says "manage and control", how supreme is that? Now, I'd like to have Mr. Rollins define that for me, please, if he would.

**DELEGATE ROLLINS:** How complete should the control of the Board of Regents be of the University System? I can't answer that categorically, Mr. Mahoney, but I feel that the Board of Regents should have the power needed to carry out the academic functions of the University System without undue harassment from outside forces. Now, we're in the business of educating people; we're not in the business of running a business according to certain things; we're not trying to make a profit. I think we lose sight of the fact that the important ones in the University System are the students. And any management controls or anything like that should be devoted to making the University System more useful to the student. At the same time, I do not deny any responsibility on the part of the Board of Regents to give full accountability to the people. Does that answer your question, sir?

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. Another question—I have a couple more, Mr. Rollins, if you would, please, to answer.

**CHAIRMAN GRAYBILL:** Very well. You may ask two more.

**DELEGATE MAHONEY:** Is this going to pull the University System out from the—entirely under—from under the Purchasing Agent?

**DELEGATE ROLLINS:** No, sir. We would have to abide by the same kinds of rules and regulations concerning purchasing as any other agency of the government, and we do.

**DELEGATE MAHONEY:** Would this pull, then—do you think, then, that it would not pull it out from underneath the Budget Director?

**DELEGATE ROLLINS:** If the Budget Director has certain relationships with all other agencies of the government, I assume he would have the same kinds of relationships with the University System.

**DELEGATE MAHONEY:** Thank you, Mr. Rollins.

Mr. President—Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** I wish that I could agree with all of this, and I know we're starting to get in, I'm watching Mr. Champoux here this morning get a record. And I don't know how much the Supreme Court is going to pay any attention to this record when they get ready to rule. I'm afraid they're going to take the very wording that we are adopting here, and we are not going to be in a position to tell them what we mean except in the words that we put into this thing. Now, "manage and control"—now, I didn't get as perturbed about this—or whatever the word should be—until Delegate Bugbee started mentioning about the paper clips, and I wondered if we were getting out from under the Purchasing Agent in this. Now, I know that this Convention does not want to set up another separate branch of government out here that only the Legislature can look at. I want to keep this under the Governor; he's the Chief Executive. He runs and he gets out here and he gets the most votes, and then he should have a lot to do with it. One-third, I've always felt—the Governor, the Supreme Court and the Legislature—not in that order but—because I'm a legislator first. But I do feel that in this kind of wording, "manage and control"—this—they could do anything. Now, I'm going to tell you what's happening over here now, and I'm questioning it. Why do we have an architect working over in the present Board of Education? All right, we've got state architects; we've got those now. I wonder why we got to set up separate branches of government in here. This is what's bothering me on this—and I'm afraid if we get this far out of field—Now, I want to ask, while I'm on my feet—and I don't know whether this will do. I haven't been able to study the Rollins amendment as far as I'd like to, but this is in the court rules in the University of Michigan and this was under theirs and it was very nearly like the one that we have here before us—before this amendment—and they state, down here, "Unconstitutionally declared. Judge Salmon ruled unconstitutional section of bills which prescribed the number of classroom hours to be taught by the faculty." The Legislature couldn't say anything about that—"Limited the University's rights to set their own tuition rates or to raise them if they choose after the academic year has started." They've got that. Now, let's go on here a little further—"spelled out the number of out-of-state students the University could enroll"; the Legislature lost all control of that. And I think we've got a marvelous University System. I'm sure that we could get a lot more—"Provided for line-item appropriations under which funds given for research or expansion of a medical school could not be used for other purposes." In other words, the Legislature determined—the Legislature, for this appropriation, and the Supreme Court held—said, "You lost that." Now, "specified that no state money could be used to pay the salaries or employees of scholarships of students convicted of discrimination of campus—for destruction of campus property." The Legislature lost its power again. Then, here, "the three universities also won right to start branch campuses or to expand present branches without the approval of the Board of Education." Then, the state did not win on these two points. "The legislative authority to say what"—wait until I get my glasses here; can't read that big word—"construction funds shall be used for and its ability to order University to use a standard financial reporting system." That's the only thing they won on. Now, I know this Convention does not want to set up the fourth branch of government. I'm sure that you don't. We—I want to answer Mrs. Daphne Bugbee—pardon me, Delegate Bugbee—in regard to the Highway thing. This was as legitimate as anything in the world.

**CHAIRMAN GRAYBILL:** The Highway what?

**DELEGATE MAHONEY:** The Highway thing that she mentioned about, Mr. President—about she wanted to know how this thing—how the Highway—

**CHAIRMAN GRAYBILL:** I don't think we should discuss how the Highway complex got in.

**DELEGATE MAHONEY:** All right—all right. That's all right. She asked the question, and I was going to answer it.

**CHAIRMAN GRAYBILL:** Right. You tell her at noon.

**DELEGATE MAHONEY:** All right. (Laughter) Now, this is why I don't like to set up another branch of government here. I'd like to see—be sure. And if we—if you think the record is strong enough—but I don't think it is—that—be assured that it still remains under our state government all the way. Legislative—I don't think we'll get out from under the court, but I'm afraid that we're going to be stricken clean out from under the Executive under the way—this amendment. Now, I don't want to belabor a point. This is just my opinion, and I might be the last guy in here that's right.

**CHAIRMAN GRAYBILL:** Mr. Barnard. Do you want to move your amendment now?

**DELEGATE BARNARD:** Mr. President. Yes, please have the clerk read my amendment.

**CHAIRMAN GRAYBILL:** Very well. Will the clerk read Mr. Barnard's amendment as a substitute motion.

**CLERK HANSON:** "Mr. Chairman. I move, as a substitute motion, to amend Section 11, page 6, lines 14 through 26, of the Education and Public Lands Committee Majority Proposal by deleting it in its entirety and inserting in lieu thereof the following words and punctuation: 'The government and control of the academic, financial, administrative affairs of the Montana University System shall be vested in a Board of Regents, who shall be selected as provided herein. The Regents shall have the power and it shall be their duty to govern the University System as a public trust in a manner consistent with the general laws of Montana. The Legislature shall pass no law which infringes upon, diminishes or transfers to another body any of the authority provided by this section. Said Board shall consist of seven members, appointed by the Governor to 6-years overlapping terms, subject to confirmation by the Senate under regulations provided by law. The Board shall appoint its Executive Officer and prescribe his term and duties. The Governor and the Superintendent of Public Instruction shall be ex officio nonvoting members of this Board.' Signed: Barnard." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. First, I would like to say that I don't claim any pride of authorship in this particular proposal. It is a compromise proposal worked out by the—an attorney at Bozeman. It's kind of a compromise between the two extremes. I would like to state, first, that I do believe that the Board of Regents needs sufficient authority to do a good job in administering the affairs of the University System. I believe, also, that they should be accountable to the Governor of the State of Montana and to the people. And I believe that this might accomplish it. In the first place, we get rid of that thing we're arguing about, the body corporate, which so many of us seem to be wondering about. And we set them up—the system up as a public trust—the Board of Regents—as having a public trust to administer the University System for the people of Montana. Secondly, we set them up subject to the general laws of the State of Montana—that would be to all of the laws affecting all of the other divisions of state government. We have a provision, of course, that—in here that would limit the Legislature from passing punitive laws directly against the University System. The balance—the last paragraph is almost—is identical to the proposal of the Education Committee in Section Number 11. And I just introduce this as a subject for discussion and we—something that might be worked out—something—we might work something out of it that all of us could agree with and would be workable with the University System. That's all I have, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** May I, first of all, direct a few questions—one question, at least, to Mr. Mahoney and then react to Mr. Barnard, sir?

**CHAIRMAN GRAYBILL:** Yes, you may.

**DELEGATE CHAMPOUX:** Charley, I agree—where did Charley go?—where'd he go? (Laughter)

**CHAIRMAN GRAYBILL:** Let's skip his question, shall we?

**DELEGATE CHAMPOUX:** All right. Well, I'm going to—for the record, I'm going to state what I have to say about it anyway. The committee does not want to set up a separate unit of government here. We feel, by the Rollins' amendment—I do—that it provides all kinds of controls, but I certainly don't think the Governor wants to hire and fire the University professors, one after another. Nor, I'm sure, the Governor—does the Governor want to, every Monday morning, sign requisition slips for paper clips. Now, the State Architect's office was the one that reviewed the University science building. Perhaps if there'd been provision for a local architect on the scene, even as one of his subordinates—this would have—that is to say, attached to the Board of Regents of Higher Education—we might have avoided that problem. In Michigan, the problem is that each unit of the University System is an independent unit, each unit. Now, what we want to do is to give the control to this body here, called the "Board of Regents of Higher Education", so we can stop this independent movement on the behalf of all of these different schools. That's what the intent of that is. Now, let's look at Mr. Barnard's amendment, if I may. The first problem we're going to have here, of course—and I hate to start this one all over again—and that's the business about what's a public trust? And, by gosh, I'm going to read Saxby's book before I debate that one. Now, another problem that's going to be is what's the general laws of Montana? Why that phrase? Can we define that as distinct to other laws—from other laws? Thirdly, once we've given this power—you see, they have to be consistent with the general laws—then we say "The Legislature shall pass no law which infringes upon, diminishes or transfers to another body." Now, is that going to be a general law, or what kind of a law is that going to be? And also, number four, the board shall appoint its Executive Officer—aren't we going to have this Higher Commissioner of Education there? Thank you.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. In the event we don't get this concluded before the noon hour—Mr. Barnard's first paragraph of his—comes from your *Law Review* that you all received of Lawrence Waldock, was considered extensively in committee. I don't care which one we finally go on and start delousing and get the thing so we can live with it, but you could all read your *Law Review* article during the noon hour if you want to find out about this. But I think Mr. Waldock, in his conclusion, said this—he said: "The quality of education in Montana will continue to depend more upon the caliber of the state's Legislators, Regents and general citizenry than upon the phrasing of this constitutional provision." And I think that's true. We can go with one or the other and get it worked over; but that is where it comes from; and you could read it over, if anyone's interested.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. It seems to me that essentially what Mr. Mahoney and Mr. Barnard both are saying is they want to make the Legislature the Board of Regents. And that is what the majority proposal is aimed at preventing—of giving the Board of Regents the authority to be the Board of Regents, giving the Legislature to control the Board of Regents via the appropriations and via the Legislative Audit. Now, I spoke on this subject at some length last Saturday and I pointed out to you that the AFL-CIO state executive secretary had given you a letter [in] which he has stated certain objections to the majority report and proposed a—what he called "a reasonable compromise". And that reasonable compromise is the exact wording of Mr. Barnard's proposal before you now. And I told you, then, the reason why the state AFL-CIO wanted that particular wording. They want it because they think it will leave the Legislature the Board of Regents, and they can't twist the arms in the legislative halls and put the pressure on the Board of Regents, which will make it possible—or easier, at least—for them to accomplish their ends in negotiating labor contracts with the Board of Regents or with the separate unit managements. Now, the basic question before us is still the same one that always has been, and that is, are we going to give to the Board of Regents the ability to manage the University System? Are we going to make them a real Board of Regents, with the power and the independence of the Legislature and of the Executive so that they don't have—so that the management of the University units do not have to run to some bureaucrat in Helena or have the Legislature specifying by line items and by particular instructions exactly how the University shall be operated, but shall have the authority to do that themselves. Let me give you an example of the sort of thing that comes up. It comes up all of the time. Enrollments in the University are never predictable, and in particular courses, they are particularly unpredictable. And we run, constantly, into the problem that we have more students than we expected and we have to have more equipment to handle a class than we expected we would have to have. Particularly this is true in the sciences, where they use fairly expensive instruments. For example, one that came up fairly recently was a gas—if I can pronounce it; this is a little bit out of my field—well, a mass spectrometer, for example, and a gas chronograph. These are fairly expensive items which have to be used in the classroom and in the laboratory, and they didn't have enough. Now, they didn't have, as things are now structured, the power to go out and buy those things immediately and have them available so that the students could use them in this course. They had to go through the state Department of Administration and take 3 weeks to get them—3 weeks out of a 10-week quarter, which seriously interferes with the ability to do the instructional job that we want to do. If the Board of Regents is given the kind of authority that the majority proposes, this sort of thing wouldn't happen, because the board would then have the financial authority to take care of this kind of problem. Now, there are other kinds of problems which arise because of the dependence of the Board of Regents upon the regulations of the—specified by the Department of Administration—

**CHAIRMAN GRAYBILL:** Mr. Heliker, unfortunately, we'd like to record your remarks, and we need you to stop.

**DELEGATE HELIKER:** Unfortunately? (Laughter)

**CHAIRMAN GRAYBILL:** Unfortunately we need you to stop, because we'd like to record your remarks. How's that? (Laughter)

**DELEGATE HELIKER:** I accept the amendment. (Laughter)

**CHAIRMAN GRAYBILL:** Okay. Very well. The committee will be in session—the committee will be in order.

Mr. Heliker, you may proceed.

**DELEGATE HELIKER:** Mr. Chairman. To revert to the example that I was giving you of the scientific instruments, let me remind you that, should the University management by some—for some reason which is difficult for me to imagine, be extravagant in the use of this power, they will have to report. They are financially accountable. The Legislature will obtain the audit after the fact and can call them on the carpet when they next come before the Legislature. Now, the—another problem which has arisen, and as a matter of fact is a current problem, is the insistence of the Board of Administration—or the Department of Administration upon uniform classifications. Now, the fact of the matter is that the Board of Regents and the University administrations are in a much better position to determine the classification of University personnel than a Department of Administration. The Department of Administration turns out to have very strange ideas. For example, the functions of deans, who they want to throw in with such people as the heads of strictly nonacademic departments. It seems to me, as a person who has been around higher education for a long time, that this is nonsense and that the University administration is in the best position to make these judgments. They should not be under the thumb of Mr. Saxby or other representatives of the Executive. They should have a measure of independence from them and must have a measure of independence from the Executive as well as the Legislature if they are to be able to do their job. That's the issue before us: are we going to make the Board of Regents the Board of Regents, or are we going to leave the Legislature the Board of Regents? The Legislature, I repeat, will—has and always will have plenty of power, because it controls the purse strings. It will have the power of appropriation and it will have the power of audit.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. The first thing—I'd like to correct one statement that has been made here on the floor that this particular proposal I introduced was a creature of the labor organizations. I would have to tell all of you that the labor groups were not even aware of it until I pointed this out. When I was discussing this and looking for something that might work as a compromise that people would accept, I pointed this out to them. And that's where they got their information from. It was nothing they dreamed up and thought of that would work from—work to their own advantage. I'm responsible for whatever information the labor groups got for it, and nobody else. I picked this up and worked on it for weeks trying to figure out if it might work as a compromise. I don't know if it will or it won't, but I don't want any misunderstanding as to where it came from. Now, I would like to also point out something else. I've had some experience with the Purchasing Department downstairs, not just recently, but a few years back. I saw an instance where a switch from an outside purchasing group through the Purchasing Department saved the State of Montana a hundred and forty thousand dollars. It hasn't been too long ago. And yet, I know that the Purchasing Department doesn't demand that every item that any institution buys goes through that department. There are many things that they buy that are general items that they can buy locally at a better price and get them when they need them. They're not as ironclad as a lot of people here would like to let on like they are. I've worked with the Purchasing Department of the State of Montana and I've worked with the Purchasing Department of the federal government. They all work about the same. Where there's a need—a real need for immediate purchase and—there's no questions asked. When there's time to go through the Purchasing Department, that's what they like to have you do. And it saves you people money every time they do it. And just think of the one item—and it wasn't too big an item either—a saving of a hundred and forty thousand dollars that I saw not too long ago right through the Purchasing Department downstairs. That's the reason that I think we should have some connection with the general government of the State of Montana with the University System. Again, I want to state that I think the Board of Regents needs authority. They need sufficient authority to do a good job in a University System, but we don't want to sit them out on an island by themselves, completely nonresponsible to anyone. And that's the thing I don't want to accomplish. I don't, also, want to subject them to punitive laws by the general—Legislative Assembly, and that's why that the statement about the general laws of Montana is in here. There is some other wording in here that perhaps doesn't do any good or any harm. I'm not overly proud of the proposal, but I still think it's probably the best one that we've got so far.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, fellow delegates. We've got three proposals before us. There's not too much difference in any of them. And the most time has been taken, really, on Mr. Rollins'. I think the same thing could be done with the majority. But our Chairman, and I concur with him, thinks this is an adequate substitute. I think the work has been done on Mr. Rollins' in any language change, so I would recommend that we proceed, at this time, by defeating Mr. Barnard's, substituting Mr. Rollins', passing it, and then go to work on the language of Mr. Rollins'. And if you want to, put in Mr. Rygg's language and test it and Rollins', or whatever you want to do, and then we'll make some progress. Because I think we're stalemated here now and going in a circle.

**CHAIRMAN GRAYBILL:** Is there other discussion of Mr. Barnard's proposal?

Mr. Barnard, do you want to close again?

**DELEGATE BARNARD:** I'd like to close this again by stating that, if there's—some other compromise is going to work out better, I'm not going to push this. I'm just looking for what's the best for the Board of Regents and the University System of the State of Montana and the people.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Barnard's amendment, which you all have before you, the purpose of which is to substitute two paragraphs in exchange for the Section 11 of the majority report. We'll have a roll call vote. So many as shall be in favor of Mr. Barnard's proposal, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please take the vote.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Nay |
| Artz | Excused |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |

| | |
|---|---|
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Aye |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 3 delegates voting Aye, 90 voting No.

**CHAIRMAN GRAYBILL:** Very well, the issue now is back on Mr. Rollins' amendment, as amended. You remember we put in the words "supervise, coordinate and manage" we put in the words "to appoint a Commissioner of Higher Education" in place of "Executive Officer". We left out any length of term, and we took out the sentence, "The Regents shall present a unified budget request to the Legislative Assembly", since that was already in the other one in Section 9. And we took out the word "Legislative" before "audit", in the last line. Is there further discussion of Mr. Rollins'?

Mr. Foster. First of all—Mr. Holland, the Chair will recognize your presence. And if you voted on the last one, the Chair will note that you were here before the last vote was taken, so you should have voted.

Mr. Rollins—or, I mean, Mr. Foster; excuse me.

**DELEGATE FOSTER:** Mr. Chairman. Would Delegate Champoux yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Champoux?

**DELEGATE CHAMPOUX:** I'll yield.

**DELEGATE FOSTER:** Mr. Champoux. I ask you this question because this same phrase was in the original majority proposal. On line 6 of Delegate Rollins' proposal, we have the phrase "which may be assigned by law". Now, I want to clarify, for my own purpose and also for the other delegates. Now, it would be my interpretation that this would refer to the other public educational institutions; and my question would be, then, that that would mean strictly other public educational institutions and would not refer to the Montana University System. It would also be my interpretation that if they could assign these educational institutions under the Board of Regents, that they could also remove them. Now, is this your interpretation of that wording?

**DELEGATE CHAMPOUX:** Well, to begin with, as I said in my opening remarks, this was to take care of the community colleges. Now, this is the terminology that's used in the statutes that puts the community colleges presently under the Board of Regents. Now, if your concern is public educational institutions, by that we mean, very specifically, those in the higher education area, because you'll notice that this section in the majority proposal is called "Board of Regents of Higher Education"; and we would hope that Style and Drafting would keep it that way. Now, as to—this is to provide flexibility. As to whether they could remove them, I would say no. Well, wait a minute; no. It would have to be yes—it would have to be, yes—because then the flexibility would be there. They could move them either back and forth. That would be in answer to Mr. Driscoll's question earlier.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman. It was my intent that it be if they were able to assign them, that they could also reassign them. Now, I would just provide this information for Style and Drafting, in case they wanted to clarify the wording in that area. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Anderson.

**DELEGATE JOHN ANDERSON:** Mr. President. Would Delegate Davis yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Davis, will you yield?

**DELEGATE DAVIS:** I yield.

**DELEGATE JOHN ANDERSON:** Carl, I'm concerned about the second section in—or sentence, rather, in George Rollins' proposal, and I know you are also. My concern is the same as you mentioned briefly here a while ago in regard to Western Montana College. It seems to me that this proposal gives delegates full power, responsibility and authority to supervise, manage and control the Montana University System. And the thing that concerns me and bothers me somewhat is this, perhaps, could be adversely to a college like Western—so I'd like to have your thinking in regard to it.

**DELEGATE DAVIS:** Well, I'm glad you brought that question up, because it not only concerns Western, it concerns any of the minor units of the University System. There's a long history of the two major branches advocating closing all the rest of the system, for years. But I think we're past that point now, Mr. Anderson. I think even with the growth of community colleges and our vo-tech, I think we've turned the corner on that centralization. And I think that they would be adequately protected under this article at this time. However, if Mr. Rollins' prevails, I'm going to suggest a compromise—not at this time, but we'll wait till we vote on Rollins'—to provide that control of the academic and administrative be vested in the board and that the financial should be prescribed as—and regulated by law, because, I think you're, in fact, that way anyplace wherein I think this would possibly be an acceptable compromise, at least one that we can test the air on. But I think—in answer to your question, I think that all the units of the University System will have to be administered as they presently exist, without some major action by the Legislature or by the people in closing any of them. Thanks for asking the question.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. Will Mr. Rollins yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Rollins?

**DELEGATE ROLLINS:** Yes, sir.

**DELEGATE BLAYLOCK:** George, under your statement here, "The Regents shall have full power, responsibility and authority to supervise, manage and control the Montana State—or Montana University System"—Now, under that language, do you see it that the Board of Regents then could, say, put in regulations as to what course that a student would have had to have followed in the secondary schools in order to be admitted to the University System? For instance, could Montana State University say, "You cannot enter this school unless you have had, say, algebra, geometry, chemistry"—whatever they might—and thus indirectly dictate the curriculum of the secondary schools?

**DELEGATE ROLLINS:** It could, I suppose; but that might be one of the values of another board, which would consult with the Board of Higher Education on such matters. The entrance requirements, I think, have usually been set up by the Board of Regents, sometimes as prescribed by law, perhaps. They could, I suppose, alter those; and it would indirectly influence the curriculum in the lower schools.

**CHAIRMAN GRAYBILL:** Very well. If there is no further discussion, the issue arises on Mr. Rollins' amendment, as amended. We'll have a roll call vote, I suppose. Very well. The section as amended, at the moment, says—and Mr. Davis is quite right that once we've adopted it as Section 11, it's still open to amendment—"The government and control of the Montana University System shall be vested in a Board of Regents, who shall be selected as provided herein. The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the Montana State—no, the Montana University System and shall supervise and coordinate other public educational institutions which may be assigned by law. Said Board shall consist of seven members, appointed by the Governor, with overlapping terms, subject to confirmation of the Senate, under the regulations provided by law. The Board shall appoint a Commissioner of Higher Education and prescribe his terms and duties. The Governor and the Superintendent of Public Instruction shall be ex officio nonvoting members of this Board. The funds and appropriations under the control of the Regents shall be subject to the same audit provisions as other funds of the state." So many as shall favor that amendment, please vote Aye; and so many shall oppose, please vote No on the voting machines. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please take the ballot.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Excused |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |

| | |
|---|---|
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 82 delegates voting Aye, 14 voting No.

**CHAIRMAN GRAYBILL:** 82 having voted Aye and 14 No, that form of Section 11 passes. Are there other matters?

I see, Mr. Davis, that you have a matter before the Chair. Do you want it read?

**DELEGATE DAVIS:** If you would, please.

**CHAIRMAN GRAYBILL:** Mr. Clerk, will you read this for Mr. Davis.

**CLERK HANSON:** "Mr. Chairman. I move to amend Rollins' Section 11 of—line 4, following 'academic and administrative affairs'."

**CHAIRMAN GRAYBILL:** Mr. Davis, I think you've got to explain that to us.

**DELEGATE DAVIS:** Mr. President. At the end of line 4, it would then read: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the academic and administrative affairs of the Montana University System."

**CHAIRMAN GRAYBILL:** "Academic and administrative", is that what you added?

**DELEGATE DAVIS:** Yes, sir, "academic and administrative". And then, after the end of the second sentence, then we would add the language "power and duties over financial affairs shall be prescribed and regulated by law." In other words, that's the Rygg amendment, or a portion of it.

**CHAIRMAN GRAYBILL:** All right, just a minute. All right, if you have your Rollins' amendment before you, at the end of line 4, you want to put an asterisk and add this sentence—this language, "academic and administrative"—so that it reads: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the academic and administrative—"

**DELEGATE DAVIS:** "Affairs".

**CHAIRMAN GRAYBILL:** "—affairs of—"

**DELEGATE DAVIS:** "—the Montana University System."

**CHAIRMAN GRAYBILL:** "—affairs of the Montana University System." And then, which is the second sentence?

**DELEGATE DAVIS:** The second sentence is "The Regents"—

**CHAIRMAN GRAYBILL:** —shall be subscribed by—they "shall—supervise and coordinate other public institutions as may be assigned by law." Then we'd add another sentence. "Powers and duties over financial affairs shall be prescribed and regulated by law." That's another asterisk after the word "law", on line 6. Very well. Mr. Davis may have that amendment. I'll repeat it once more. "The Regents shall have full power, responsibility and authority to supervise, coordinate, and—manage and control the academic and administrative affairs of the Montana University System." And then we add a sentence after the sentence—the middle sentence there—which says: "Powers and duties over financial affairs shall be prescribed and regulated by law."

Mr. Davis.

**DELEGATE DAVIS:** Mr. President. I think this is really the heart of the matter—is how much control does this body want to give the University System? So let's face it head on, issue by issue, and vote and determine it. The next amendment of Mr. Rygg's provides that powers and duties over both financial and administrative affairs would be regulated and prescribed by the Legislature. This is one step above that and provides that only financial affairs will be. It seems that we all believe in academic freedom and that we don't want the Legislature prescribing what courses are going to be taught, who's going to teach them. And I think they should have the control over the hire and firing of their personnel, and not be subjected to coming to Legislature. Now, a lot of you feel they should have financial control, too. However, I suggest that that might be an area of compromise, because the Legislature, in fact, has financial control, regardless of what you put in there. They still are going to have to appropriate the money, and if they're not satisfied with the way you're doing it, they're still going to make you talk turkey to them. So, I think this may be a compromise where we'll start meeting these issues head on and find out which route we want to take.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Champoux.

**DELEGATE CHAMPOUX:** As Mr. Davis knows, when he puts this in, he just goes back to the old Constitution and the old problem again. And he's been listening to me for 2 months, but I haven't convinced him. When you get—if you look at the old Section 11, it's been given general control and supervision. Then, it's been taken away from them in the second paragraph. And if you put the financial—all the financial controls as prescribed by law, you're doing that very same thing again. After all, if you're sitting in here in this assembly and somebody doesn't like a professor—and it's happened many, many times before—you simply delete his salary from the general appropriation. Isn't that one way to control the faculty? What we're talking about here—in terms of finances, if after the State Board of Education has brought this budget to the Assembly and the Assembly decides, you know, how they want to—the amount as to how much they want and the specific details, it'll be a detailed budget. Then, when it goes back, the University should have internal control of their financial affairs in terms of hiring and firing and this sort of thing. They're going to be using central purchasing. They would want to, since it's the cheapest way. But this simply—this is what the whole argument has been about this morning. Mr. Davis knows it. If you put this in, then you've undercut the whole thing.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. I'm quite happy to support Delegate Davis' substitute motion, and I think that's the direction we were trying to go to start with.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** I rise to oppose Mr. Davis' amendment. I think our Chairman, Mr. Champoux, has stated it very well. This says we want the Legislature to be the Board of Regents. And that's been our problem for many, many years. We need some kind of independent, decisionmaking authority. All of us sit on boards of various kinds. I happen to serve on a hospital board, and seven to ten people can make decisions and work and a hundred people have a hard time. They can make the overall appropriation, but they need the local—or, rather, the day-by-day kind of attention that a System and its Regents can back up. I would oppose Mr. Davis' amendment.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. I rise to oppose the amendment. I think Delegate Davis suggested that the Legislature makes appropriations anyway, and that's true. But I'm suggesting that the amendment says much more than that—that they've only had the fiscal control which the Legislature is willing to give. And I can't help feeling that there would be very little give, and we're back where we started from.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** Mr. Chairman. I, too, rise in opposition to the motion by Delegate Davis. I think that it would be completely wrong for us to seek to control the academic and administrative affairs of the University System and that the Constitution should be free of that language. I will not speak on the rest of it, but I intend to oppose the whole thing since that's in there.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** It seems to me that there's a little confusion here. The amendment provides that the Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the academic and administrative affairs of the University System. Now, the present Constitution—my learned Chairman of the History Department seems to think that says that in the present Constitution, but it says in the present Constitution they "will have general control and supervision subject—as prescribed by law" as to all three. Now, this limits the Legislature to—this gives you your academic freedom that you all want. This will give you your administrative freedom that you all want, but it's going to test the air as to whether this body is going to give you your financial freedom. And that's—I'm trying to get to the heart of it—and that's the thing we want you to do. Get up and take sides, and then we can vote, because that's really the only issue you have left here unless there's some in the body that don't even think you should have academic and administrative freedom.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I'm going to have to answer that again. Now, if you talk about "as prescribed by law", you go back to that old Constitution. That also included, Carl—and you know it—the financial affairs. And this is part of the problem we're having, total financial control. We're looking for internal control. If you say—to a degree—if you say that the Legislature is going to completely control the purse, you know that the power of the purse controls everything. Now, you said you want to get on, you're going to get to the heart of it, and so forth. All right. You also said that Mr. Rygg has got another proposal for an administrative—control over the administrative, but I submit if you give the financial and the administrative control, then you've lost control completely to this Board of Regents and you've got the State Legislature as the Board of Regents.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. I know that this body still believes in law and they still believe in the legislative system. And let the Legislature determine—I think that it's terrible if we go out here, and all of a sudden, we've got another group sitting out here. I—now—on this amendment, you see—and I think he said "administrative"—away goes the Purchasing Agent. I think he'll be out of there. And I think, also, that you're going to find that the budgeting—as far as the Budget Director—and the Governor trying to get a balanced budget. And he's suppose to—I don't know what—I don't remember what the new Constitution says, but in the old one, he had to present a balanced budget to the Legislature. Now, we come with this group, and all of a sudden, the Governor's got it and they come in here and say, "Well, now, here's what we want; you draw your budget, Mr. Governor, to the way we're going to get ours first." Now I—let's please get the University System back under law. Just a keen way of saying the University has—the Legislature's—to me is a supreme power in government. This is the only thing that can initiate; he can—they can initiate. The Governor can't initiate. He can send up, but the only person that can get it is the—introduction of a bill is on the floor, if it's a one-house or a two-house Legislature. So, all I'm trying to do is to just see that this one department, these six institutions located in the State of Montana—and they're great institutions—but let's just get them back under the rest of the government. We don't want them sitting out here to the side. That's all I want. And I question Mr. Davis' point of the Purchasing Agent. The Highway Department has to be under Purchasing. Everybody else is under Purchasing. The great institutions of the State of Montana are under Purchasing. Well, let's get these people under Purchasing. Then I think that we have those things that—let's get them under—all under one law, and Montana will be under one system. Now, in answer to this that I think Mr.

Champoux—and I—in answer to one question that he mentioned about this—the presidents'—the salaries that they could cut out, the Legislature—the Congress had that determined for them, I think, in two or three cases. They cut a man's salary off and said they would abolish the department, and the Congress—the Supreme Court of the United States said they couldn't do it. So I think that that is handled. Now, I know that we all hate to live under law. I'm sure that each one of us would like to break a law if we could, but please, let's all get under one law in the State of Montana.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman. I rise in opposition to Mr. Davis' amendment. And, Mr. Mahoney, this—we're not taking the University System out from under the law. The Board of Regents, of which the Governor is a member, is not going to submit a budget that will make it impossible for him to submit a balanced budget as prescribed by the Constitution. And I don't—I think we should give the University System its right to manage its financial affairs. I oppose Mr. Davis' amendment.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman. I'd like to ask Mr. Davis a question, if I may.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** (Inaudible)

**DELEGATE RYGG:** Mr. Davis, what do you feel you removed from there when you took the word "administrative"—Do you feel that had to do with purchasing and architects and things like that, or what does it mean?

**DELEGATE DAVIS:** I don't know. I think it means the same thing to me when I took it out as you had it in when you put it in. (Laughter)

**CHAIRMAN GRAYBILL:** Can you be a little more specific, Mr. Davis?

**DELEGATE DAVIS:** Yes, sir. In—Mr. Rygg's proposed amendment says, "Powers and duties over financial and administrative affairs shall be prescribed and regulated by law." I want the University System to have the power to administer their own affairs. I don't want legislators to be expert educators during the period of time that they gather here, so I want them to have the authority to administer their own affairs. Whether it includes purchasing, I think that will be up to the Board of Regents to make that determination. And we're going to have an appointed Board, confirmed by the Senate. I hope they'll be capable, qualified people. If they don't, the whole system is not going to work anyway, whether they've got it or whether they haven't.

**CHAIRMAN GRAYBILL:** Very well. The question is on Mr. Davis' amendment which has the—we'll have a roll call—which has the effect of adding the words "academic and administrative affairs of the Montana State University Systems"—so that it says: "The Regents shall have full power, responsibility and authority" and so forth "over the academic and administrative affairs". And then, put in another sentence: "Powers and duties over financial affairs shall be prescribed and regulated by law." So many as shall be in favor of Mr. Davis' amendments, vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Excused |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Absent |

| | |
|---|---|
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Nay |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Absent |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Absent |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 40 delegates voting Aye, 52 voting No.

**CHAIRMAN GRAYBILL:** 52 delegates having voted No and 40 having voted Aye, Mr. Davis' amendment fails and we're back considering Section 11.

Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I move the Committee recess until 1:45 p.m. this day.

**CHAIRMAN GRAYBILL:** The committee—motion is to recess until 1:45 p.m. today. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Convention recessed at 12:37 p.m.—reconvened at 1:50 p.m.)

**CHAIRMAN GRAYBILL:** The committee will be in session. The journal may show the presence of Mr. Artz. Very well, ladies and gentlemen of the committee, before lunch we were still debating Section 11 and we had adopted, tentatively, Mr. Rollins' amendment to replace the committee's majority report, and as you know, Mr. Rollins' language was amended in several specifics.

It's still open to amendment.

And, Mr. Rygg, I see you have a new one up. May we read that one?

**DELEGATE RYGG:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well, we'll start with Mr. Rygg's new amendment. Now, it's different in some respects from the one you have printed, so you'd better listen and see what he says.

**CLERK HANSON:** "Mr. Chairman, I move to amend the Rollins amendment, in line 4, by adding, after the word 'the', the following words: 'academic afffairs of the'—"

**CHAIRMAN GRAYBILL:** Does that mean "control of the academic affairs of the"—is that what it says?

**CLERK HANSON:** Yes, sir.

**CHAIRMAN GRAYBILL:** Is that all?

**CLERK HANSON:** "—and further amend, in line 6, after the period after the word 'law', the following words and punctuation 'Powers and duties over financial and administrative affairs shall be prescribed and regulated by law.' Signed: Rygg."

**CHAIRMAN GRAYBILL:** Very well, this amendment is similar to Mr. Davis' amendment. You remember, we discussed that before lunch and Mr. Davis added the words "academic" and "administrative". Now, Mr. Rygg would add just "academic", on line 4, so it would read this way: "The Regents shall have full power, responsibility and authority to supervise, coordinate, manage and control the academic affairs of the Montana University System"—and then he would add, at the end of the second sentence, the language which is underlined in the middle of his proposal that's on our desks, namely: "Powers and duties over financial and administrative affairs shall be prescribed and regulated by law"—the effect of Mr. Rygg's amendment being to place in the hands of the Legislature both the financial and administrative but leave the academic in the hands of the Board of Regents. Is that correct, Mr. Rygg?

**DELEGATE RYGG:** That's correct, Mr. Chairman, and I think you've explained it well enough. It's just—the difference between Mr. Davis' amendment is that I have limited it to academic affairs and, of course, increased the powers of the Legislature over the administrative affairs, so I don't want to belabor it. I think we all know what it's about. It's just another chance to vote on it a different way. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Champoux.

**DELEGATE CHAMPOUX:** What we have here, 50 percent of it we have already voted down this morning. As a matter of fact, this is even more restrictive than what Mr. Davis offered, because now we're not only going to deny them the right to spend their money internally; we're also going to administer it—decide what kind of paper clips we're going to buy, what kind of pianos, and what have you. The same arguments that we used against Mr. Davis' amendments apply here, in that we go back to the old Constitution where you give them powers and then you deny it. There isn't any difference in this with that amendment than what we have presently, and you're going to have the same problems. I object to the Rygg amendment, and I oppose it.

**CHAIRMAN GRAYBILL:** Is there other discussion?

Mr. Toole.

**DELEGATE TOOLE:** Well, I don't—Mr. Chairman, I don't see how we can grant them financial powers and take away administrative powers. It seems to me we put them in a hopeless situation. I just don't see how we can—we're just in an absolute box if we do that, so I oppose the Rygg amendment.

**CHAIRMAN GRAYBILL:** Is there other discussion?

(No response)

**CHAIRMAN GRAYBILL:** Very well.

Oh, Mrs. Speer, yes.

Mrs. Speer.

**DELEGATE SPEER:** I rise to speak against Mr. Rygg's amendment. I spent 37 years at the University of Montana as a documents librarian, and for about 15 or 20 of those years, I was in charge of the binding. I—In that experience I learned what the inefficiency and the cost to the state was of placing the University System under the administrative and financial regulations of the Legislature. This meant that the contracts for the binding had to be submitted each year to the Purchasing Agent and then were awarded to the lowest bidder. We spent—or I spent many hours each year in preparing estimates of the costs that were involved in changing binderies. This is a sort of an internal matter, but I just explain that this involved matching colors to a new bindery. It involves taking rubbings of the backs of the volumes in order to insure that you had the same kind of lettering, the same size, and the same placement on the back. If the Purchasing Agent then, awarded the contract to the lowest bidder, it didn't make any difference how far away or how long a time the volumes were away from the library and not available for use. Upon their return, then, to the library we—if we had to change to a new bindery, we had to spend the time in collating; that is, in going through the volumes to see if the binder could be relied upon to see that every page was there and was not torn or mutilated or missing. I cannot recall the amount of money involved in the binding budget of the University Library, but it was a very substantial sum, and there was a great deal of cost that was incurred in the changing of binderies every year. It did not always occur every year, but we were never—be—able to place the binding—renew the contract with the same bidder without going through all of this bidding procedure.

**CHAIRMAN GRAYBILL:** Very well, is there other discussion?

Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. President, I'd just say that if we are ever to have a new day for higher education in this state, we must defeat this amendment. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** I think that the sense of this body is to provide some degree of insulation for the field of higher education from political pressures. And for this reason, I resist the amendment by Mr. Rygg. I think that this insulation will not guarantee excellence in the field of higher education, but I think we have a better chance if we do provide it. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman, I would just like to relate a story about budgets and university presidents. Not too many years ago, some of us were on a committee for the support of higher education; and at the meeting that we had prior to the adoption of the budget, it was suggested that, in view of the financial status of the state, that perhaps the budget should be trimmed. One president said, "Well, we'll trim it, but I'm going to have some fat in it." After the Legislature had concluded its findings and it was—had—went over, supposedly with a fine-toothed comb, the President came back to the school, after having given statements that the University had—or the institution had been robbed, you might say, by the Legislature, he came back and, in an address to the faculty, explained that despite the cut, he was able to provide an increase of 13 percent in salaries for everybody all across the board and that he had ample money to operate the University. I think that there needs to be some supervision among the universities.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Rygg's amendment to add to the Rollins amendment the words "supervise, consolidate"—"coordinate"—rather—"manage and control the academic affairs of the Montana University System", and then to add this other line: "Powers and duties over financial and administrative affairs shall be prescribed and regulated by law." So many as shall be in favor of that amendment, vote Aye on the voting machines; so many as shall be opposed, vote No on the voting machines. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |

| | |
|---|---|
| Bowman | Nay |
| Brazier | Absent |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Absent |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Aye |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Absent |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Absent |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Absent |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Siderius | Nay |
| Simon | Aye |
| Schiltz | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Absent |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 33 delegates voting Aye, 58 voting No.

**CHAIRMAN GRAYBILL:** 58 having voted No and 33 having voted Aye, the motion is defeated; and we're discussing the language of the Rollins' amendment, substituting it for Section 11 of the majority report.

I take it, Mr. Rygg, your other amendment can be withdrawn?

**DELEGATE RYGG:** (Inaudible)

**CHAIRMAN GRAYBILL:** Mr. Toole, I take it you don't want to make your amendment?

**DELEGATE TOOLE:** (Indicating the negative)

**CHAIRMAN GRAYBILL:** Okay. Members of the committee, you have before you on the recommendation of Mr. Champoux that when this committee does arise and report, after having had under consideration Section 11, as amended, that it recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Do you want a roll call vote? Mr. Champoux likes roll call votes on this. All those in favor vote Aye on the voting machines; all those opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please tally the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Absent |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Absent |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |

| | |
|---|---|
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 68 delegates voting Aye, 25 voting No.

**CHAIRMAN GRAYBILL:** 68 delegates having voted Aye and 25 having voted No, Mr. Rollins' substitute for Section 11, as amended, is adopted. Will the clerk please read Section 12.

**CLERK HANSON:** "Section 12. State University Funds. The funds of the State University and all other state institutions of learning, from what other—whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties, shall be devoted to the maintenance and perpetuation of these respective institutions." Mr. Chairman, Section 12.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. Chairman, I move that when this committee does rise to report, after having under consideration Education and Public Lands Committee report, Section 12, that the same be passed.

Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** This is identical to the old section in the old—in the Constitution; and it has served real well; and there have been no problems with it; and I don't see any use of belaboring the point, arguing one way or the other about it, so I close.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 12, State University Funds? (No response)

**CHAIRMAN GRAYBILL:** Very well, members of the committee, you have before you, on the recommendation of Mr. Barnard that when this committee does arise and report, after having under consideration Section 12, that we recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered. Now, if you'll turn to page 49 in your booklets, you'll see the Public Lands Article. The majority report on the Public Lands Article is on page 49. Will the clerk please read Section 1 of page—of the Public Lands Article.

**CLERK HANSON:** "Section 1. Public Land Trust—Disposition. All lands of the state that have been or that may hereafter be granted to the state by Congress and all lands acquired by gift or grant or devise from any person or corporation shall be public lands of the state and shall be held in trust for the people, to be disposed of hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or inherent—interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any land which the state holds by grant from the United States, in any case in which the manner of disposal and minimum price are so prescribed, be disposed except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the Board of Land Commissioners in a manner prescribed by law. Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area." Mr. Chairman, Section 1, Public Lands.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, I move that when the committee does arise and report, after giving due consideration thereto, that we do adopt Section 1 of the Education Article on Public Land Trust.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, fellow delegates. This article was jointly assigned to the Education Committee and the Committee on Natural Resources, and we met jointly with—or representatives of both committees met, reviewed the provisions of this article, and we agreed to present this proposal in this fashion for your consideration. I'll not reread it, but all but the last sentence thereof is identical to the first sentence of Section 1. We have deleted the balance of the first section and given the Land Board power to classify lands as provided by law. We have deleted the statutory matter in—or what we felt was statutory matter in Sections 2 and 3. Since you all did so well on the Education Article and we got through, I trust I could have a couple of minutes on this article, because it's extremely important. I don't think it would be improper, I trust, to thank and give credit to C. R. Anderson, a great educator in our state, who contributed a lot of information on the public lands, which I used, which will come out in a book of his that's soon to be published. I also don't think it would be improper to put in the record our thanks to the members of our committee: Mr. Bruce Sievers, our research analyst in the Education and Public Lands Article; Sally Watson, our secretary; Geoffrey Rupp, Maureen Callaghan, Nancy Lien and John Murphy. These people provided—and the other interns on the staff—a great contribution to this Convention, and we're very grateful for what they have done, and I'd like the record to show that. I want to call attention, and I trust that all you historians and people who have heard this before will kindly bear with me for those who haven't, but it seems like it should go into this thing at this time, because no one has known what a public trust was in this Convention too much, and now is the time when we are going to talk about a public trust. We had some people in this country, years ago, who understood public trust. It went 'way back in time, and I think it's worth consideration that the Land Ordinance Act of May 20, 1785, reserved lot 16 of every township for the maintenance of public schools within the territory, and the State of Iowa, in 1802, received Section 16 in trust for schools. In 1848, when Oregon became a territory, it was granted Sections 16 and 36 in trust for education, and the Organic Act for Montana of 1864 reserved Sections 16 and 36 for the public schools. Our Enabling Act, in 1889, in Section 10 thereof, granted Sections 16 and 36 to the State of Montana in trust for the support of common schools, and when we accepted the Enabling Act by Number 1 ordinance appended to the Constitution, we adopted—we accepted this trust, under certain terms and conditions which provided that we couldn't sell the lands for less than $10 per acre, and it provided for certain classifications. It also provides that we could exchange the land and said that they shall be public lands of the state and shall be held in trust for the people to be disposed of "as hereinafter provided". Now, the Constitution—the Enabling Act says that we could sell and lease the land, and our Constitution had a similar provision. The Enabling Act was amended by Congress in 1932, which gave us permission to exchange lands for other lands, public or private, of equal value or as near as may be of equal value. Now, our Constitution has never been amended since we were permitted to do this by the Enabling Act; hence, we have placed in this section the very small word "exchange", which is a real nice Constitutional, legal thing to do, and very simple to explain. Now, another thing about the public lands—you should know that the Enabling Act originally excluded lands that were mineral-bearing. This, too, was amended in 1921 and let us get mineral lands, but those old people that placed this in trust at that time said you have to keep all your oil and gas. It's not optional; whether we sell the land, exchange them or otherwise, we retain the oil and all the mineral rights. So we therefore have a hundred and eighty-seven years of continuing concern by our lawmakers for education, and we have a hundred and eighty-seven years of the keeping of a great public trust. It states in your comments how well the lawmakers throughout the years have looked after this trust, and it has been discussed here on the floor that we have in excess of four and a half million acres of land in the trust; we have almost $3 million in deferred payments from sales—not annually, however—total; and we have close to $53 million in the permanent school fund. So, that accounts for the first step in our change. Now, the second step. The 1971 Legislature passed, by House Joint Resolution 32, for the Constitutional Convention to amend Section 17, Sections 1 and 2, to permit classification other than the four classifications that were in the original Constitution; and the main idea of this was so we could have classification for multiple-use purposes—and multiple-use, of course, will answer a lot of questions that have been in the minds of, maybe not you folks, but the public, as to why more recreational use cannot be made of these lands. They have been constitutionally classified under agricultural, grazing, and so forth, but there was no other classification, and so we have deleted that to leave it statutory, and this was met with the unanimous approval of both the Natural Resources Committee and the Education and Public Lands Committee and should, then, permit the State Land Department to go ahead and classify these lands as to what natural resource benefits they should have. So, we merely deleted the classification restrictions and left it, then, to the Legislature. I might comment, just briefly, on another matter that was brought up on the floor—and I promised to comment on it at that time—and that is as to whether the Legislature is trying to make the best use of these lands or obtain the greatest return for them—the lands. They have developed a policy to improve the state lands, and the Legislature has formed some objectives to improve the lands, and their objectives are to improve—to develop and improve state lands in order to promote increased returns to the trust or to restore the land to its productive potential, to place tracts of state land in their highest and best use and derive greater income for the support of the trust. And among the other provisions and policies adopted is—the conservation of wildlife habitat will be a consideration in any project undertaken. Every effort will be made to preserve existing habitat, and whenever feasible, plans for increased cover and feed will be incorporated in the projects. So the State Land Board is on a program, right now, of trying to improve these state lands to make a bigger yield and a bigger return. In reviewing this with the Land Department, our committee was provided with a summary of their resource developments, which showed with graphs and charts the expenditures they were making on the lands, what returns would be made to the State of Montana after these developments were made. So it would be our committee's recommendation to this body to adopt the committee report as it is here. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman, I would like to state that I am very happy that Mr. Davis chose to define the term "public trust"; I wish he had done it 13 days ago. I know what the term means, and I think most everybody in this chamber knows what it means. It was accepted almost a century ago; and I submit that if it was a good idea then, it's a good idea today; and so I support Mr. Davis in his explanation here as far as the school lands are concerned. I would also like to say that if there were those in this Convention who did not know the meaning of the term, I submit it was because they chose not to know it. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Simon.

**DELEGATE SIMON:** Mr. Chairman, may I make just a comment before I—then permission to ask Mr. Davis a question?

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE SIMON:** In the exchange of—

**CHAIRMAN GRAYBILL:** Mr. Simon, speak up, and then we'll turn the volume down and cut out some of the music. Speak up good and loud.

**DELEGATE SIMON:** In some of the conditions of the exchange of land, I have recently, in the last 3 years, had some experience. Now, this is not state lands; this was federal land—I mean, Forest Service land—but the State of Montana could get into the same condition. In the area at Red Lodge, we have a ski run that I helped start up there. Many years ago, on this same mountain there, was the Anaconda Company owned four pieces of land. Now, the land that they owned was cut over, and the timber was taken out, and then that grew up over the last 60 years. When we chose to put on the ski run at Red Lodge, we were in the drainage valley, where—the only place you could put your terminal. Four of these pieces of land were available, and the ski run bought one at the bottom and one at the top, just at the right of—a quarter of a mile from where they might land. The land at the top was not available for—and it wasn't any good for anything but just growing timber. It was in the Forest Service. The land at the bottom, where we owned the land, did not exactly set where we put our terminal. Now, we have about—with a road up there, the whole ski area is about a million dollars now. We went to the Forest Service—and this is where your exchange of lands could be really important—we went to the Forest Service, because our terminal did not set on our own land, and we were only a few feet from it. We had 80 acres of very fine land. We said to the Forest Service, "We would like to trade you 800 acres that's the only private land beyond what we could use in the ski run, 480 acres next to the ski run, the hundred and sixty acres on top, which was owned by the ski run, and some land we had down below, if we could get the land which was where our terminal sat. Now, the reason I'm bringing this up, you have a paragraph in here, Mr. Davis, that has to do with exchange and sale of public lands. Now, the state could get into this same situation. We went to the Forest Service, they went to Missoula, and Missoula went to the Washington, D.C.—and we offered them 1,488 acres of land, plus land we owned down below for exchange, a hundred and sixty on top, all surrounded by the Forest Service, at the price of the land before the ski run went in there. Part of the land next to it, I paid $2.35 an acre; it was just mountain. When we put in the ski run and attempted to make the change where we could put our own terminal on our own land and provide the Forest Service with—we only wanted 40 acres—1,488 acres surrounding the run, this is what we got, and this is what I want to bring to your attention. After 2 years of going back and forth and meeting with the Forest Service about 15 times and then going back, here's what happened, in brief. Each time we met with the Forest Service—this could happen to state lands—each time we met with the Forest Service, they came back one step at a time and said, "The land at the bottom of the mountain has now changed in value." Why did it change in value? I said, "It isn't any different from the land 16 feet from it," and they said, "Oh, yes it is. You have now put almost a million dollars, including the road in this area, and the land that your ski terminal sits on is now worth"—listen to this—"$2,000 an acre." They refused 2,000—or 1,488 acres for 40 acres that was all the same kind of land before the ski run went in. And I would caution you, in your last sentence, having had this difficulty and being right in the middle of it from Washington, D.C. down and the state could be the same way. Now, may I ask a question of Mr. Davis?

**DELEGATE DAVIS:** I yield, Mr. Simon.

**DELEGATE SIMON:** Supposing you had a piece of land that was in a position where development might take place. The thing that bothers me in your proposal, where you may, in a sense—any land may be exchanged for other land—so good—public or private—so good—which is equal in value—so good—but when you get down, as closely as possible, to equal acreage, you can lose your shirt; and I think that something ought to be done in that area, where we are having recreation come into our state in such great numbers, where something ought to be in this different than equal acreage. Do you have any comment, Mr. Davis?

**DELEGATE DAVIS:** Well, my only comment would be, I believe, Mr. Simon, that's the language that came with the amendment to the Enabling Act by the Congress. In other words, they permitted us to exchange land for other land, equal in value or equal in acreage or as nearly thereto as possible, so we have adopted the language that—I think you've got a very good thing, and I'm glad you did bring it up. And, of course, the point you make, I think, is the reason we are all interested in retaining the state lands. It just gets more valuable as developments do take place, and will continue to.

**CHAIRMAN GRAYBILL:** Is there other discussion?

Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, fellow delegates. Over the last couple of weeks, I received considerable mail—and I know the Chairman of the Educational Committee has received considerable mail—about public access to the public lands; and rather than to ask us to assume that issue, I've got an amendment, which I'd like to propose, which would allow the Legislature to provide for public access on these trust lands. And I think when you are dealing with a trust, as we are here, that one might say that the power to provide access is inherent; but I think there is a serious legal question when you are talking about trust lands. Therefore, I think that this type of an amendment is necessary in order to clear any question in the mind of legislators in the future as to whether they do have the power to provide public access. So, I would move to amend Section 1 of the Public Lands Trust proposal by adding thereto, on line 29, page 49, the following sentence: "The Legislature may provide public access to these public lands for recreational and other purposes." Thank you.

**CHAIRMAN GRAYBILL:** Settle down, please. Mr. Cate, will you send your amendment to the Chair. Very well. Mr. Cate proposes an amendment to Section 1 of the Public Lands Article by adding a sentence at the end of the article that says: "The Legislature may provide public access to these public lands for recreational and other purposes." "The Legislature may provide public access to these public lands for recreational and other purposes."

Mr. Cate, do you want to discuss that further?

**DELEGATE CATE:** I'll discuss it if anybody has any questions. Apparently Mr. Davis does.

**CHAIRMAN GRAYBILL:** All right, Mr. Davis, you have the floor.

**DELEGATE DAVIS:** Mr. President, fellow delegates. I very reluctantly take issue with Jerry on this matter, but I feel I must. The question of access was discussed in our committee. Now, unfortunately, we didn't have any witnesses who appeared and testified—as you'll notice, the witness in the back of our comments—although access was included in our comments. The big problem you have in that question is whether that is in complete disregard of the Organic Act and the Enabling Act as to what the—who the principal beneficiary of this trust is. The beneficiary of this trust is the schools, and whether you can take money out of the school funds to provide public access for recreational use would probably violate the federal Enabling Act, but I don't think the problem is that serious. We've tried to meet that problem, and the Legislature is aware of the recreational interest in making the highest and best use of this land by changing the classification so we can get recreation in a classification by the Legislature and by the Department of Lands. Now, the Department of Public Lands right now is making a survey and a study of what the recreational value is of these lands. Now, if it's a question of getting access for recreation, it's the same as getting access for the highway. If you're going to have eminent domain proceedings to go through my house or Mr. Cate's, or whether there's access by a county road, they're studying that. In the policy of the state, as described by the Legislature of 1967, it states, under development of state land resources, I quote: "It is in the best interest and to the great advantage of the State of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the University System, and other institutions benefiting therefrom, and that in so doing, the economy of the local community, as well as the state, is benefited as a result of the impact of such development." Then it goes on, and at this time they earmarked and permit a—two and a half percent of the income to go into a resource development so they could develop these areas and develop these lands to place them at a higher and better use. There, again, we're getting in a matter that I think that Mr. Garlington has spoke of this morning. Of course, the Legislature can provide for public access. They can do a thousand things with these lands—they're doing—so, if you start spelling out just one item that they can do, which they already can do, you may be excluding many other things, such as the resource development program they've already passed. So, most respectfully, Jerry, I'm glad you brought that up, because it needed to be discussed here on the floor. It's in our comments, and we received many, many letters on that subject of public access, but I think the answer to those questions primarily is that the Enabling Act places these things for school. I don't think the Land Department can give this land away for recreation. It has to get its highest and best value, and they are working to get a multiple-use classification. That's the very point of our changing the classification, so I most respectfully would have to resist the amendment.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I would resist the amendment, and I would leave it to some of the ranchers who lease such lands from the state—Mrs. Pemberton and Torrey Johnson and others—but I have clients who lease grazing land from the state, and if you have dual use, as I think this would make possible, or at least it would constitute a recommendation for dual use, you're going to cut down on the revenue of that property, at least from what I hear from my clients. They're constantly beset by people getting on those state lease lands and setting fires on them and rustling on them and doing all those other things on them, and I don't think we want to do that in this Constitution.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I would like to have Delegate Cate yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Cate?

**DELEGATE CATE:** (Inaudible)

**DELEGATE BATES:** Mr. Cate, now in the case of private land—and the only way they have access to state land is through private land—then what would you recommend in this case? Do you think the state should buy this, then?

**DELEGATE CATE:** Well, that's the problem that we're faced with. So much of our state lands are tied up and surrounded by private lands that there's no way for the public to gain access to it, and these public lands are the public's land—they belong to the people, not just to the rancher that happens to be leasing them. That's our land—your land and my land—and I think that what we own we ought to have the right to use, and what this provision provides is not that the Legislature must provide access or not that all lands are open for access, but that the Legislature may provide access to public lands. Now, in certain areas surrounding the cities, where there is a need for recreational areas, this would provide a place that the city dweller could go hunting, the city dweller that doesn't know a rancher in the area; he would have a place to go hunting; he would have a place to go fishing—this type of thing. And in those situations where that area is surrounded by private land, the state would have to condemn a right-of-way—and that's contemplated—but this, Grace, this doesn't open up the whole thing. It says "The Legislature may provide", and, as Mr. Davis pointed out, there is a question, where you have a trust, whether or not—unless it's expressly provided, whether or not this is inherent in the trust powers—to provide access.

**DELEGATE BATES:** Okay. Would Mr. Cate yield to another question, Mr. President?

**DELEGATE CATE:** I certainly would.

**DELEGATE BATES:** I was wondering, now, in cases where now in residential areas, I understand 9 percent of the land must be put aside for recreation, for parks. There's an area in one town that I know that is really isolated from the rest of the people. Then, would you require, if you were renting a home in this strip where this park is in the center, that they, too, would have to allow access to this park?

**DELEGATE CATE:** Mrs. Bates, this amendment of mine is directed towards the school lands and wouldn't cover—it says, "The Legislature may provide public access to these public lands", referring to the lands in—that are in this section, which are school lands, not the parklands within the city that you're talking about.

**DELEGATE BATES:** Thank you.

**DELEGATE CATE:** However, in any event, I think that those parks are open to the public.

**DELEGATE BATES:** Thank you, Jerry.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Yes, I can see that this is a comparative thing, because either way, you would have to permit access over private land, and one is the same as the other. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Chairman, fellow delegates. We went at this in long, long discussions and detail. We have literally hundreds of letters from people concerned about public access to these lands. Now, we talked this over in great detail with Mr. Schwinden, the very capable Public Land Commissioner—he's done a wonderful job down there in that department in the past, also—and his problem is, as a trust, there is the responsibility. Now, what happens if damage is done to this land? Who's going to assume the damages? Is it going to be the lessee? Is it going to be the Public Land Commissioner, or shall the Legislature provide for the damage that might be done? There's the problem. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President, fellow delegates. I think you're opening up a very controversial subject here, and I think Mr. Champoux pointed out a very possible thing that could happen. If you have ever observed some of the hunting camps, some of the things that were done in camps, that they could move in and—

(Interference in sound system from radio broadcast)

**CHAIRMAN GRAYBILL:** Mr. Wilson, hold it a little closer and speak up, please.

**DELEGATE WILSON:** —they could move into a piece of school land and create a lot of damage, and as he has pointed out, who would be responsible? Now, this creates a problem. Also, many of these tracts are small tracts that are isolated in range operations, and you would have to go across several miles of private land to get to them. How many more roads are you going to create? How many more gates are you going to have left open? You're opening up a whole series of problems, and I do not think that wherever there is any basic need for the people to have access to these lands, such as fishing streams and so on, that they will be denied the right to go into them. But I urge you to think this over very deliberately—about the controversial issues that you are opening up if you go for this amendment. Thank you.

**CHAIRMAN GRAYBILL:** Very well, is there further discussion?

Mr. Conover.

**DELEGATE CONOVER:** I think that we're opening up something real wide, as he has told you. I want to remind you, I think every rancher in here, including myself, when we have state land, which I have some of, in a very dry year like we had last year and a shortage of grass and we move our cattle from different areas to protect this ground from the cattle tramping it—from dry—drouth areas. What would happen if you give them access to this land—that you're trying to protect the grass you've got on it for fall feed? I would guarantee you that, if you let all the hunters in there, that you wouldn't have any more grass unless you left a thousand head of cows in there, in a few hours. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman, I would just like to point out that these public lands—these state lands, which are school lands, are in trust, as I understand it, particularly and only to the support of the schools of Montana, and they are not in trust like federal land would be—forest land, national forest, or this. When a person leases these school lands, he has particular obligations there to live up to. He can improve the land, it points out very carefully in the contract, but you must not delete it or destroy it or abuse it in any manner. These things are laid down. You are in possession of that land under the contract. It is just practically as if you owned it, but you certainly have a responsibility. But, again, I must repeat that it is in trust, just the schools. I think I'm right there. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Ask.

**DELEGATE ASK:** Would Mr. Davis yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Davis, will you yield?

**DELEGATE DAVIS:** Yes, Mr. Ask.

**DELEGATE ASK:** Say this provision is not placed in the Constitution, could the Legislature some day provide for public access for recreation to certain sections of land, should the thinking change, particularly in their lease agreement?

**DELEGATE DAVIS:** The Legislature—the State Land Board is doing that now. They're trying to provide access. Without any constitutional provision, the Fish and Game Department is buying access to the major streams for fishing sites, and it is a goal under one of the goals set out under the statutory on the development of the lands—under goal Number 9 of the Land Board, it says, "Certain areas of the state land can be readily adapted to recreational purposes. In developing these areas, consideration must be given to multiple-use for the state lands." So, your answer is not only yes, they are doing it right now under the present Constitution.

**DELEGATE ASK:** Thank you, Mr. Davis.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I know a little about some of these lands because I was born and raised in eastern Montana, and the land that we are talking about, by and large, is grazing land. Mr. Conover, the other day, stated, I think, there's 4.6 million acres of this total package that we're talking about that is grazing land. You would be very hard-pressed, I think, to describe most of this as recreational in value. Most of it is dry grassland, and there isn't very much there that you could find recreational use for in the first place. As has been pointed out here, in cases where there is land that does have recreational potential, we are now flexible enough, I think, in our Public Lands article so that the state can exchange, in cases where that can be done, and give public access to this. But I wonder if the public wants access to the grazing land that we're talking about, that four—over 4½ million acres we're talking about; if the public is willing to pay part of the lease when they go out to drive around on these lands, or whatever they're going to do on them—I'm not sure what they're going to do—I wonder if they're ready to assume the liability for fires or this kind of thing that might develop on this land. I think if they're willing to do these things, fine—then let them use the land. But until they are, it seems to me that we have an obligation to the school fund, which is no small fund—it amounts to over $52 million—and this has accrued as a result of the management of these lands in the past. I doubt very seriously that the Legislature would want to change this pattern unless they can see where the school lands are going to bring in the kind of revenue that's been brought in under the present program. We'd better defeat this amendment.

**CHAIRMAN GRAYBILL:** Very well. Mr. Cate, do you want to close?

**DELEGATE CATE:** Yes, I do. First of all, who's responsible for damage? Well, I don't know what type of damage you're talking about. I go out on your land and shoot a cow, I'm responsible for it. If that cow is on state land or federal land or private land and I shoot that cow, I'm responsible for it. If I go out and set a forest fire, I'm responsible for that forest fire and I can be sued for it by the federal government, and, likewise, if I set a range fire on state land, I can be sued for that. The individual is responsible for the damage that he does. Now, North Dakokta has a provision that is strictly enforced and works. With regard to hunters—to the use of their state lands, you cannot drive an automobile off the road, and if you do, you're subject to fine. And that practice is generally followed throughout North Dakota, because—I have some personal knowledge about that because my family has about 80 sections over there—and people don't drive off the road; they drive on the road. That prevents the individual from going out and driving all over the property, like Mr. Conover talks about. I think that the demands of the city people have to be recognized here, and we're not opening this up so that every section of state land is open to the public. What we're providing is that the Legislature could provide that certain state lands, like that land down on the river Mr. Drum has, can be used by the public. That's what we're talking about—in the wisdom of the Legislature if they see fit—and supplemental payments could be made by Fish and Game if necessary to supplement the school fund in order to provide this public access in the use of these public lands by the public. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Cate's amendment, which would add to Section 1 of the public trust—of the Public Lands Article the following language: "The Legislature may provide public access to the—to these public lands for recreational and other purposes."

**DELEGATE FOSTER:** (Inaudible)

**CHAIRMAN GRAYBILL:** Do you want a roll call? So many as shall be in favor of this amendment, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Absent |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Absent |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |

| | |
|---|---|
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Absent |
| Romney | Aye |
| Rygg | Absent |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 23 delegates voting Aye, 69 voting No.

**CHAIRMAN GRAYBILL:** 23 having voted Aye and 69 No, the amendment fails. We're considering Section 1 of the Public Lands Article. Is there further discussion?

Mr. Belcher.

**DELEGATE BELCHER:** Would Mr. Davis yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Davis?

**DELEGATE DAVIS:** Yes, sir, Mr. Belcher, I yield.

**DELEGATE BELCHER:** Carl, probably somewhere in the Constitution or somewhere along the line there is some mention of mineral rights being reserved by the state, but I fail to see it. Could you answer this for me?

**DELEGATE DAVIS:** I'll answer your question. Mineral rights were first reserved by the United States government, and we could only select nonmineral-bearing grounds. When they—they didn't identify all this land, and when they did, finally—we did get land and there certain new minerals were found as time progressed. And I think it was in 1921 that the government changed the Enabling Act and said we could locate mineral-bearing grounds, or confirmed our ownership of the minerals on the lands we'd already located; so regardless of whatever date it is, the act now provides that we have to retain for the school fund—the Enabling Act—any minerals in any of the lands; so that's by the Enabling Act, right when we took it. Now, in addition to that, the Legislature has passed a statute saying that in any sales, leases or exchanges, the State of Montana reserves all the mineral rights, so it's not a discretionary matter; the mineral rights are reserved to the school fund.

**CHAIRMAN GRAYBILL:** Is there other discussion?

(No response)

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you, on the recommendation of Mr. Davis that when this committee arises and reports, after having had under consideration Section 1 of the Public Lands Article, that it recommend that the same be adopted. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

Now, Mr. Champoux, do I understand that there is no—Is there a majority Investments Article, or is there—

**DELEGATE CHAMPOUX:** The—as I indicated the other day to you, Mr. President, if you look at the majority and the minority, they've already been taken care of in the Revenue and Finance Article under investments, unless there's an objection to that.

**CHAIRMAN GRAYBILL:** Very well. Then am I correct, Mr. Champoux, that we have now acted upon each article of the Education and Public Lands proposal?

**DELEGATE CHAMPOUX:** I think Mr. Barnard has a question.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President, yes, we have acted on that already. That was the amendment we put in Revenue and Finance report the other day, unless we missed something.

**CHAIRMAN GRAYBILL:** Very well, Mr. Champoux. I think one of the reasons I'm having trouble is that my book doesn't have a page 55, but I think it might be a good idea that you make a motion that Section 1 of the Investments Article not be adopted, Mr. Champoux, and then we'll find out whether it's taken care of or not.

**DELEGATE CHAMPOUX:** I so move.

**CHAIRMAN GRAYBILL:** Very well. The motion has been made that when this body arises and reports, after having had under consideration Section 1 under the Investments Article on page 55 in the committee's book, the majority proposal—and there is a minority in the book, on page 61, I think it is—that we recommend the same not be adopted. Is there any discussion?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of not adopting anything on investments in the Education and Public Lands Articles, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered, and Investments are dropped out.

Now, Mr. Champoux, I think we've covered your article, is that correct?

**DELEGATE CHAMPOUX:** Yes, sir. Shall I move to—

**CHAIRMAN GRAYBILL:** No. Mr. Murray, do you want to move that we rise and finally report?

**DELEGATE MURRAY:** (Inaudible)

**CHAIRMAN GRAYBILL:** Oh, all right. I guess we want to go back to reconsiderations. Oh, I thought I might get by there. All right, Mr. Murray, you've made a request to reconsider. Do you want to state it?

**DELEGATE MURRAY:** Mr. Chairman, it appears you couldn't avoid me either way. Mr. Chairman, having voted on the prevailing side, I move to reconsider Section 1, subsection 2, commencing particularly on line 20, page 8, of the majority proposal of the Education and Public Lands Committee, to permit consideration of an amendment of the last sentence of subsection 2, which was deleted by the Committee of the Whole, and I defer at this time to Delegate Harbaugh for explanation.

**CHAIRMAN GRAYBILL:** Very well. Mr. Harbaugh, if you want to explain briefly for purposes of the motion to reconsider what it is you want to reconsider.

**DELEGATE HARBAUGH:** Mr. Chairman, we realize that there were some fears about the meaning of this phrase "full funding" in connection with Section 1, subsection 2, of the Education report; and the committee members, along with some of the various other delegates here, have discussed the implications of this section and feel that it ought to be reconsidered; and there has been placed on your desks several items. One is this pamphlet "Here's How it Works", which explains the foundation program and which we hope some of you have had time to look at since last Saturday—or Friday, when we discussed this. We felt that this might better help us to understand the concerns that the committee has with respect to the full funding of the state's share of the basic elementary and secondary program; and if this section is accepted for reconsideration, we would like to move Mr. Habedank's amendment which has been prepared and placed on your desks.

**CHAIRMAN GRAYBILL:** Is there other discussion of the motion to reconsider, limiting the discussion strictly to that?

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman—Mr. President. I feel that the action of this committee on the Bill of Rights equal opportunity has set forth the goals of what we want to do but that when we came down to subsection 2 and the elimination of the last sentence, we closed the door to carrying out these rights. I urge you to let us discuss the amendment which you have before you and show you why it is—at least, we feel it is—necessary that a sentence worded similarly to what I have set forth in my amendment be considered and passed as a part of the Constitution; and for that reason, I urge you to give us an opportunity to reconsider our action in this regard.

**CHAIRMAN GRAYBILL:** Very well, the motion is Mr. Murray's motion to reconsider Section 1, subsection 2 of the Education Article.

Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, would I be out of order to ask for reconsideration of Section 9, 10 and 11, too, at this time, too?

**CHAIRMAN GRAYBILL:** I'm coming to you next, but I think we'd better take them one at a time. Section 1, subsection 2.

Mr. Champoux—on the issue of reconsideration.

**DELEGATE CHAMPOUX:** As Chairman of the Education Committee, I am for that move to reconsider that section. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Murray's motion to reconsider Section 1, subsection 2. All in favor of the motion to reconsider, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted.

Mr. Habedank, do you want the Chair to have the clerk read your—

**DELEGATE HABEDANK:** Please.

**CHAIRMAN GRAYBILL:** Will the clerk please read Mr. Habedank's motion.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 1, subsection 2, commencing on line 20, page 8, of the majority proposal of the Education and Public Lands Committee, by adding the following sentence after the words 'deemed desirable': 'It shall fund and distribute in an equitable manner to the school districts of the state the state's share of the basic elementary and secondary school system' Signed: Habedank."

**CHAIRMAN GRAYBILL:** Now, if you happen to be on the other page, it's at line 17 on page 3—Section 1, Article 2, and Mr. Habedank would add the language: "It shall fund and distribute in an equitable manner to the school districts of the state the state's share of the basic elementary and secondary school system." The last sentence was deleted previously. Very well.

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President, ladies and gentlemen. I am sure that you, along with me, had several qualms about the words of the last sentence of subsection 2, which was deleted by this Convention. In the first place, the goals which we set forth for education were obviously unattainable for a considerable period of time. We set forth in the first section that we wanted to provide full educational potential—develop the full educational potential for each person. The committee very carefully explained to you that this was a goal and not a mandate to the Legislature. They divided the section into two subsections; and they came down to the second subsection and they said, very properly, "The Legislature shall provide for a system of quality free public elementary and secondary schools"; and they explained to you that it was their intention in this regard to limit this to elementary and secondary schools. In the remarks which was made, they carefully pointed out they did not intend to saddle the State of Montana with the funding of kindergarten schools, nor to saddle the State of Montana with this free public school, the higher educational system. By the insertion of the word "basic" into this program, we clarified, I think, satisfactorily the fears that many people had that the courts would come along and there would be a series of lawsuits to try to compel the Legislature to provide whatever type of elementary and secondary school education someone might conceive of. We have clarified this in the Constitution. We said they shall provide a basic system, and this is what the Legislature has been doing. It's been—it's done it for years. Whether or not that has been a system which gives every child in the State of Montana truly equal opportunity to an equal basic educational program is questionable. Back in 1949 the foundation program, which I'm sure is now familiar to all of you, was developed—which theoretically, at least, provided that the property—the money would be raised from the taxing of property where the property was and would allow it to be spent on an equalized basis where the child is. This program has been nurtured, worked out, conceived and is—I think correctly so—is now on the statute books. But the inequities that the Committee on Education has pointed out exist in it principally for the reason that the State of Montana, after requiring the basic levies which bring into play the foundation program, has never funded its share of the foundation program, with the result that the foundation program, as it is adopted by the Legislature, sets forth the basic educational system all right, but it does not equalize between districts and between counties because of the fact that when it fails to fund its share of this, pouring the money in so that the program is truly equalized, the poorer counties or the areas with low valuations are forced to tax themselves even greater than before, and many times without a vote of the people, to meet the foundation program plus the permissive levy. Now, what have we done so far in this Convention to take care of education? The Revenue and Finance Committee, in its well-presented and passed article, mentioned to you the Serrano case and why they were trying to arrange the Revenue and Finance Article so that they could take care of this, and by a tremendous majority, this body voted to turn over to the Legislature the requirement that taxes and assessments be equalized between counties and they gave them the teeth to carry this into effect. There has been a lot of debate as to whether or not they would be able to do this any better than they have done through the State Board of Equalization—the County Boards of Equalization or not, but at least the command is there, and they will have to attempt it. Then, the next thing, the State Board of Equalization—the Revenue and Finance Committee did—was to change the mill limitation which has previously existed, limiting the mills that could be levied by the Legislature to 2 mills. If the Legislature is to tax property for any reason whatsoever, it was pointed out on this floor, the only reason that they should have the right to tax property is for education. The suggestion has been made by members of the Revenue and Finance Committee—where is the Legislature going to get the money to finance its share that they have failed to fund up to now? Up to this time, in fairness to the Legislature, you will have to say that we have limited them; they could not tax property, they had to provide the money from some other source—and I'm in favor of that, if they can. But if they cannot, it is no more unfair or wrong for the Legislature to tax property on a statewide basis to fund their share of the educational program than it is for the local districts to have to do it on an unequalized basis. The proposal which I have made is not, I contend, legislative; it is strictly constitutional. We are saying to the Legislature, "We have untied your hands. We want you to set up a basic elementary and secondary education. You have full power to decide what that is going to be; but when you get it done, the state's share of it, as you determine it"—we give the Legislature full power there to determine its share, too—we haven't tied their hands—"shall be funded and distributed in an equitable manner to the school districts of the state." Now, we have also, heretofore, provided in this article that the school districts shall be in charge of the local schools, and this is as it should be. I think it's also essential that the Legislature should have the power to require school districts to tax for a portion of their educational program in order to keep control of education at a local level, in order to allow people to know what is being spent for education, and this is what my proposal also does. It does not say to the Legislature, "You have to pass a sales tax; you have to increase income tax; you have to do this or you have to do that." If they can do it through some other means, they can; and that is where legislation comes in and where their hands are free. But as a constitution is both a grant of powers and a prohibition of powers, I submit that the only body who can tell the Legislature what they shall do as far as funding of the state's share is concerned is this body sitting here today; and if the things you said in the Bill of Rights means anything, if the things you said in regard to a desire to provide a basic system of quality free public elementary and secondary schools means anything, then the Legislature deserves the protection of also having you to say to them that they have the duty to fund and to distribute in an equitable manner the state's share of this program. I urge you to think this over very carefully. The committee's proposal, as I read it, did nothing more than what I have here, except we have taken out the words that have caused uneasiness, like "full funding" and "sufficient"—we struck "funds sufficient to insure full funding"—and then they didn't have in there the state's share. We put back in that it's to be the state's share, they shall fund it. And I urge you to seriously reconsider your action on this and put back in the Constitution—or put into the Constitution that we will submit to the people this provision; and I feel very strongly that there isn't a school district, there isn't a board of trustees throughout the State of Montana—except in those limited instances where we have excessive valuations and they are getting by on low taxes because no one can reach their property for the support of schools—that would be against this proposal. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, would Mr. Habedank yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Habedank?

**DELEGATE HABEDANK:** I yield.

**DELEGATE ECK:** I—you know, I read through this a half dozen times before it dawned on me what it was meaning. But I still don't think it quite says it, because if you break it down, it really says something like "it shall distribute the state share of the elementary and secondary school system", and, you know, I kept seeing the school system being distributed, and I wonder if maybe what you mean to be saying is something more like "the state share in the funding of the basic elementary and secondary school system".

**CHAIRMAN GRAYBILL:** Mr. Habedank, the Chair had the same trouble; and don't you mean the state share of the program or of the cost?

**DELEGATE HABEDANK:** I would be happy to put in "of the cost".

**CHAIRMAN GRAYBILL:** Maybe we can let Style and Drafting do it, but the sentence—as it stands, you have them distributing the system, whatever that means.

**DELEGATE HABEDANK:** I would be—I had in there originally, "It shall be the duty of the Legislature to provide by taxation or other means" and do these things; and in an attempt to meet the objections of various members of the Revenue and Finance Committee, we tried to strike it down to basic words and I—the cost is what I'm talking about, and I'd be very happy to amend "the state share of the cost of the"—Mr. Chairman, I move—

**CHAIRMAN GRAYBILL:** Mrs. Eck, if he added the words "of the cost"—"share of the cost of the basic elementary system"—is that what you're driving at, Mrs. Eck?

**DELEGATE ECK:** Yes.

**CHAIRMAN GRAYBILL:** Mr. Habedank, do you want to make that amendment to your own motion?

**DELEGATE HABEDANK:** Yes, Mr. President.

**CHAIRMAN GRAYBILL:** Very well, after the word "state share", we'd put in the words "of the cost of the basic elementary and secondary school system". All in favor of letting Mr. Habedank make that amendment in his amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Very well, that's what we'll do—"the state share of the cost". It passes. Is there further discussion?
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I'd like to nominate Mrs. Eck and Mr. Choate to the Style and Drafting Committee, because the three of us had the same idea and one of them got the floor first. I also wonder if Mr. Habedank would yield on another question.

**CHAIRMAN GRAYBILL:** Mr. Habedank?

**DELEGATE HABEDANK:** I yield.

**DELEGATE SCHILTZ:** Is there any magic in the word "basic"? I don't recall that there's any definition anywhere in the statutes or elsewhere about a basic elementary and secondary school system. Wouldn't it be just as well if we just called it the "elementary and secondary school system"?

**DELEGATE HABEDANK:** I think there may be no magic in it—there's no magic as far as I am concerned—but I think there's a magic as far as the public is concerned. They are very concerned. And the delegation here, in deleting that section, evidenced its concern about educational theorists coming in with every type of—shall we call it "screwball education proposal" and insisting that this be in here, and it was felt that "basic" would help. I conceded something—the court would have to—might be called upon to construe, but I think the Legislature is also given an opportunity to construe it in that word.

**CHAIRMAN GRAYBILL:** Members of the committee, Mr. Schiltz, you might—I might refresh your recollection. The other day when we redid subsection 2, we struck out the word "high" and we added the word "basic", so it now says, at the moment: "The Legislature shall provide for a basic system of quality free public elementary and secondary schools". I don't know why we did that, but we did put the word "basic" in line 1 and took out the word "high".

Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman, I will have to give my same speech I try and give every time, I guess, but I have read all of these new, modern constitutions and they all say generally that the state will provide a free public school system. They all stop. They don't try and go on and say what kind of taxes are we going to have, how we're going to distribute them. It's purely legislative. The brief comments we've had now show the confusion or differences between delegates; and obviously if we say that the Legislature shall provide for a public school system, they're obviously going to have to raise taxes. I can't say that we'll have a foundation program 30 years from now, or how they'll have to finance it. It might be all by sales tax, income tax, property tax, oil income; and I just think that—or a lottery—I just think we're getting into trouble to keep legislating in this Constitution, and this type of language has no place in it, so I speak in opposition to it. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I would have to disagree with what Mr. Brown says. I feel this is a very much needed thing in our Constitution. It's true that the other constitutions don't include this, but the other states aren't in the same position that Montana is in. Mr. Drum said the other day that our state ranks third in the amount of property tax that our citizens pay towards schools, and that's true. Our people are doing a tremendous job. They are carrying a tremendous load and burden in this respect. But there's another statistic that we need to look at here, too. Montana ranks 44th among the states in the amount of support that the state gives to the school systems. About 24 percent of the total budgetary needs of our school system is supplied by the state. There are only a very few states that are below us in this category, and this is one of the reasons that we feel that we have to have something like this in our Constitution.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** Mr. President, I don't oppose this amendment, for some of the reasons I had the other day; however, I'd like to comment on what Mr. Harbaugh just said. When we talk about percentage of contributions, there's undoubtedly some states that levy a statewide property tax for school systems and that's included in the state's grants back to the school system, so you really can't use percentages like that. What you're trying to do is glue into a Constitution a mandate on top of a purely legislative program. The foundation program was started in '49, and it's purely legislative and depends on what the Legislature wants to do every fiscal period, or every year now if we're going to meet every year. And you're just trying to mandate something on top of that program that they can change at will, and I agree very strenuously with Mr. Brown that you are just creating more words and more words for confusing in this program. And just the way it's worded—like we had trouble—what Mr. Schiltz and Dorothy Eck brought out, but we also have, I think, trouble with the word "equitably". Equitable to who? The student, the taxpayer, the teacher—to who? I just don't think it belongs in the Constitution. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Three points, sir, if I may. In reference to Mr. Brown's comment, only these are—this is a statement that he used from the Municipal League's suggested constitution. States have adopted—only 10 states have adopted this particular wording; most others have some kind of detail. In reference to Mr. McDonough's comment; our biggest problem, Swede, has been not the foundation program; it won't be, I don't think, in the future, any particular type of program that the state puts out. The thing that we want to do is to make sure the state pays their share, and they haven't been doing it in the past. Now, I am in support of the Habedank amendment.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, Mr. Brown keeps stealing my lines all the time. What if, hypothetically, the state determines that its share of the support of the state schools is going to be 10 percent of the cost of the basic program, which they certainly can do because, after all, they set the foundation by law, and here we haven't defined the foundation program in the Constitution. And besides, who's the state and who's the county? The state doesn't have any money; the state just gets the money from the taxpayers, and the state has to work out a system of how they are going to distribute the taxes that they collect from the people. So, it seems to me that it's—to say that the state will fund the foundation program when we don't even define the foundation program in the Constitution seems the height of absurdity. We had a considerable argument, as I remember it, when the General Government came in and suggested that the Legislature might amend the Constitution by passing an amendment and letting two sessions of the Legislature go by and then have it go into effect; but here we're putting an amend—a provision in the Constitution that would give the Legislature the power to repeal it the next day by simply repealing the foundation program. And so it just gets back to the fact that we're going to have to finance our schools the way the Legislature, through—acting through the people of the State of Montana, want to do it; and I just can't see where this sentence adds anything but confusion.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman, I oppose this amendment, too, but not really because of the amount of money. I can't help but make an observation. I think our committee did say that we opened the door to statewide financing, and maybe we were wrong in doing that. Maybe we should have said we just unlocked it and we wanted the Legislature to open it. But, certainly, we didn't expect to have the Board of Education just—well, I mean, the Committee of Education right there at the door when you open it up and come right through. (Laughter) We sort of figured we should have a little time to get this thing squared away; and if we're going to do it on a statewide basis, it's going to take a little while to arrange this on a statewide basis and get it appraised on a statewide basis. And after all, we didn't do it, we just made it possible for the Legislature to do it; and I really think we're rushing things a little bit, because this is going to be a little matter of time and it's going to—first they are going to have to agree to do it, which we haven't told them to do, and we're letting it up to them; we're suggesting they do it. We should think it be on an appraisal—but, man, to have someone just come up to the door and knock it down and say, "We want it right now"—before we are ready—I really think it's too soon, and I, frankly, don't think this would do any good anyway. I don't think it's part of the Constitution. I am against the amendment. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, I can see both sides of the argument. I can see where this could be legislative, but while I was home just Sunday—we didn't have a very long weekend, as you know, this weekend—I had two calls from local School Board members wanting to know why we deleted the state's funding of the school program, and they were quite concerned about it. And I explained to them that I didn't think this really done what they thought it did, that it was still up to the Legislature and they could still do it, but that didn't seem to satisfy them. They seemed to have the idea that, when we take this language out, that we don't necessarily intend to finance the program through the state levy; so perhaps we ought to think of it from that standpoint, from the reaction that some of the local School Board members are going to have, because they're going to have a lot of influence on the final acceptance or rejection of this Constitution. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman, I rise in support of Mr. Habedank's motion. I feel that in the cities across the State of Montana, now, we're faced with a great problem—the number of mill levies that will have to be run in this current school election—will be held April the first—and the city I come from and the city Mr. Joyce comes from, that mill levy is—36 mills will be run this time; and I'd say the chance of passage of this are very slim. And somewhere along the line, we have to do something to correct this problem; and maybe a mandate to the Legislature to fund this program will be the mandate necessary. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, I rise in support of it, and I think the most important reason is the one that Mr. Habedank explained. The state, up till now, has set a foundation program and has been unable to fund it, and they simply put it back on the local property tax. And most of the trouble that education has been catching is because the Legislature has essentially balanced its budget with the educational program of the State of Montana. What this does say is that once the state determines that, the state is responsible for its share. I think it's essential and highly desirable. We will get equitable assessment, and this will help. And I'd like to disagree with my esteemed Chairman, Mr. Rygg; I don't think education is kicking down the door. I think this is necessary to go along with what Revenue and Finance has attempted to do—provide equality and equality of assessment, taxation within the state.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, I support the Habedank amendment. I'd like to point out, as he did, that we do have a good foundation program in the State of Montana and that the more that the state funds that program, the more closely our foundation program comes up to the criteria as laid down by the Serrano case in California. It is only when our state Legislature fails to meet the obligation under the foundation program that we begin to get these real inequities built into it. For instance, the state right now is funding only about 65 percent, and the other 35 percent has to go back on local property tax levies, which builds in these inequities. And, to make matters worse, the Legislature has fully—has failed to fully fund even these inadequate schedules for 16 of the 23 years since the enactment of the foundation program. We are also fully aware of what the Legislature will attempt when hard-pressed for money. In the last session the Senate, by a vote of 42 to 11, passed a bill that would have reduced income tax earmarking for school equalization from 25 percent to 1 percent, barely enough to still be constitutional and with no assurance or commitment to replace the money with an increased appropriation. Now we have, in the Revenue and Finance Article, completely removed earmarking of income tax for school equalization and last Friday even removed the instruction to the Legislature to appropriate any money for school support. In fact, Revenue and Finance even removed the constitutional requirement that there be a state income tax. So, I think that this is little enough insurance, if we put in the Habedank amendment, to at least instruct the Legislature that they must meet their share of the foundation program; and I support the amendment.

**CHAIRMAN GRAYBILL:** Very well, the issue is still on Mr. Habedank's amendment.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, the diagram I hold in my hand shows the manner in which the pie is cut at the present time, only it isn't. This proposition in the Habedank amendment would make constitutional what is now statutory. It would place the foundation fund into the Constitution—that's what it amounts to—and I have no particular objection to it excepting I think it's statutory and has been ever since the thing has been started. I point out that in the—since the removal of the 2-mill levy, that there is no reason why the state could not take over the county equalization basic 25-mill levy and 15-mill levy and approximate the state equalization fund and levy enough mills to make it. That would undoubtedly qualify us, under any construction of the Serrano case, as affording equal funding by the state; and I don't think this amendment is worth all of the haggling.

**CHAIRMAN GRAYBILL:** Mr. Champoux, do you want to—

**DELEGATE CHAMPOUX:** Briefly, sir, if I may respond to that. Mr. Romney, Mr. Rygg, we are only knocking at the door; but you know, we've been inside that room before—that lovely damsel known as education has been statutorily raped because we haven't got, and we haven't up to this day received, what we should have to fully clothe what is known as the educational system of Montana. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, I rise in support of this amendment. I think it's innocuous, it doesn't mean anything, it won't cause—won't do any good and won't do any harm; and if it'll keep somebody happy, I guess we'd better put it in.

**CHAIRMAN GRAYBILL:** Is there other discussion?

(No response)

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Habedank's motion that we add to subsection—

Do you want to close, Mr. Habedank?

**DELEGATE HABEDANK:** Yes. First I would like to say that my interest in this is not that I have children in school who will need this. My children are finishing college, but I have worked with this since 1949. The next thing I would like to say, in regard to my colleagues who are so interested in constitution instead of legislation, that I would suggest that they might have thought of that a few days ago when they amended the legislative act by constitutional amendment in order to take care of an act relating to Workmen's Compensation, which the Legislature could have corrected. I have learned very well, while I've been here, if I'm for something, it's constitutional, and if I'm against it, it's legislative. I can't think of anything, Mr. Rygg, that would bring about fair appraisals faster than if you had a statewide levy, and I do not think we necessarily have to wait until the Legislature gets around to correcting all these things before this could take effect, because you are, in effect, having levies now unequally on a county basis. To those of you who say we're locking in the foundation program, I say to you most sincerely the foundation program is on the books. We are not locking it in. The Legislature can change it; and to that extent I agree with Mr. Nutting that this thing may not do any good, but it certainly won't do any harm, and if it will make me and a lot of other people who have been working with schools for a lot of years happy, I think the schools and the chidren of Montana are entitled to have it. The next thing I would call to your attention is that the Montana School Boards Association, the M.E.A., and I am aware of no other school organization—people who work with the schools—who opposed the full funding of the state's share of whatever program they have for equalization. The only organization that I'm aware of who has opposed this—and they don't oppose it in principle, but they're always talking about the inequalities of taxation—they've been talking about it since they helped get the foundation program through in the first place—and that's the Montana Taxpayers Association. And even there, in the article which appeared in the paper which I'm sure you received—it came in our box—was directed more to this funding of education at a level which no one could understand what it was going to be—in other words, full educational opportunities for everyone—then they were—then they point out that this would have to be funded by the Legislature. We have taken care of all of these objections. Admittedly, the Legislature can change the program, and this is fine. I think that this is what the Legislature should do, but I think the children of Montana are entitled to this, and I urge you to reconsider your vote and include this in the new Constitution as a new basis for the children.

**DELEGATE FURLONG:** I ask for a roll call, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the issue before us is Mr. Habedank's amendment to add to subsection 2 of Section 1 the language: "It shall fund and distribute in an equitable manner to the school districts of the state the state's share of the cost of the basic elementary and secondary school system". So many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Absent |
| Berg | Aye |
| Berthelson | Absent |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Aye |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |

| | |
|---|---|
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Absent |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well—is your mike out? Very well, 75 having voted Aye and 19 voting No, that motion carries and that amendment is made. Members of the body, you have before you, on the motion, I believe, of Mr. Harbaugh, originally, that when this committee does arise and report, after having had under consideration subsection 2 of Section 1 of the Education Article, as amended, that we recommend the same be adopted. Is that all right, Mr. Harbaugh?

**DELEGATE HARBAUGH:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted as amended.

Mrs. Bates, you have a motion to reopen Section 9, 10 and 11. Is that correct?

**DELEGATES BATES:** Mr. President.

**CHAIRMAN GRAYBILL:** And may the Chair read your motion?

**DELEGATE BATES:** Yes, please; and then I would like to speak on it.

**CHAIRMAN GRAYBILL:** All right, the clerk—do you want to read the motion to reconsider.

**CLERK HANSON:** "Mr. Chairman. I move to amend Sections 9, 10 and 11—"

**CHAIRMAN GRAYBILL:** Well, you are—did you—

**DELEGATE BATES:** I'm asking—

**CHAIRMAN GRAYBILL:** —vote on the prevailing side?

**DELEGATE BATES:** Yes, I did vote on the prevailing side.

**CHAIRMAN GRAYBILL:** Very well, she means to make this as a motion to reconsider.

**DELEGATE BATES:** —reconsideration—

**CHAIRMAN GRAYBILL:** Go ahead.

**CLERK HANSON:** "Mr. Chairman. Having voted on the prevailing side, I move to reconsider and to amend Sections 9, 10 and 11, pages 5 and 6, by deleting these sections in their entirety and inserting in lieu thereof the following language: 'The general control and supervision of the State University and the various other state educational institutions shall be vested in the Superintendent of Schools and one or more State Boards of Education whose powers and duties shall be prescribed and regulated by law.' Signed: Bates." Mr. Chairman.

**DELEGATE CHAMPOUX:** Point of order, Mr. Chairman.

**DELEGATE BATES:** Mr. Chairman—

**CHAIRMAN GRAYBILL:** Just a moment. Mr. Champoux, what's your point?

**DELEGATE CHAMPOUX:** I'm questioning the—Mrs. Bates' vote on one particular—Section 9 we were working on. For instance, if we are working on the Gysler amendment—is that the one?

**CHAIRMAN GRAYBILL:** Well, we're working on the final adoption of Section 9—

**DELEGATE CHAMPOUX:** This morning?

**CHAIRMAN GRAYBILL:** —10 or 11—

**DELEGATE BATES:** Final adoption.

**CHAIRMAN GRAYBILL:** —10 and 11 this morning—

**DELEGATE CHAMPOUX:** This morning.

**CHAIRMAN GRAYBILL:** —and 9 last night.

**DELEGATE CHAMPOUX:** All right, I remove it.

**CHAIRMAN GRAYBILL:** Very well. Now, Mrs. Bates, explain briefly the purpose for which you want 9, 10 and 11 opened, please.

**DELEGATE BATES:** Mr. President, fellow delegates. We here are working for a workable Constitution, a fundamental document. We are trying to get away from the too-detailed, restrictive Constitution that we are now tied with. We—in listening to all the arguments pro and con on the various topics under education this morning, I see we—I understand the entire group is for a very responsive, accountable Department of Education while still providing the safeguards and flexibility. Today we have adopted, up until now, the—and locked in the Constitution a great deal of statutory measure. We have discussed two boards, one board, a chancellor system; and many of us realize that some of these systems have been tried and have not proven workable. If we let this to the Legislature as a statutory measure, if something wasn't workable, then they could handle it. We have no guarantee that what we have done here today will solve the problems for tomorrow. What we need is flexibility that will provide accountability, control, responsibility under the Legislature. Therefore, I ask your consideration in reconsidering and supporting my amendment. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harper, you also had a motion concerning this. Do you want to discuss it?

**DELEGATE HARPER:** Yes, Mr. Chairman. Mine has been distributed and is on your desks. One—two simple suggestions, really. One is that, instead of labeling Sections 9, 10 and 11 as if they're three separate sections, recognize the fact that they are intertwined and call it all Section 9, with three subsections, subsections 1, 2 and 3, and thus, maybe, by the structure of the article relate these boards a little bit more. I think we've done a good job of thrashing out the duties of these boards, and I would not like to join with Mrs. Bates in seeing us strike all that out. I have one concern that might hit at something of what she and others are getting at, though; and they're concerned that instead of leaving so general the wording in present Section 9 on the so-called "State

Board of Education"—that is, the joint meeting of the other two boards—that this be the group that's required—really, this requirement is implied now by the fact that we are asking them to submit a unified budget request through proper channels to the Legislature—that the implication be spelled out a little bit with a sentence as we have it here: "It shall be responsible for long-range planning and evaluation of policies and programs"—I'd like to strike out the words "and administration", because that gets us into a snarl with the particulars too much—responsible for long-range planning and evaluation of policies and programs for the state's educational system. Now, what we mean, simply, is this: somebody needs to take an overall look and see how elementary education, secondary education, vocational education, community colleges, university systems, and all relate in terms of overall planning. As I say, in order to approach a unified budget asking, they would almost have to do this, but I believe it makes that statement about our state overall Board of Education a little bit clearer. And that would be the motion should Section 9 be reconsidered.

**CHAIRMAN GRAYBILL:** Very well, the Chair has accepted Mrs. Bates' and will accept Mr. Harper's motions to reconsider. The purpose of Mrs. Bates' motion to reconsider is to insert new language—general language that would replace 9, 10 and 11. The purpose of Mr. Harper's motion is to renumber 9, 10 and 11 as 9, sub. 1, sub. 2 and sub. 3, and then to propose a new 9, sub. 1, as you see before you on his distributed sheet. Now, the issue, then, is whether to reconsider Sections 9, 10 and 11 in order to do either of these two things. If the motion to reconsider passes, it would be the Chair's intention to let Mrs. Bates make her motion and let Mr. Harper make his substitute motion, or vice versa, and then we will consider and dispose of them one way or the other.

Mr. Champoux, do you want to discuss the issue of reconsideration?

**DELEGATE CHAMPOUX:** Yes, sir. I would rather that you took up both of these reconsiderations at once, sir.

**CHAIRMAN GRAYBILL:** That's what I'm doing.

**DELEGATE CHAMPOUX:** To react to Mrs. Bates' amendment, this is the same old argument that we've heard—

**CHAIRMAN GRAYBILL:** Now, I don't want you to argue the issues and whether you should do with her amendment. I want you to argue whether you want to reconsider or not.

**DELEGATE CHAMPOUX:** I am against reconsideration, simply because we'd be rehashing the whole thing over again. It's a move simply to get the one board in again.

**CHAIRMAN GRAYBILL:** Is there other discussion of the motions to reconsider?

(No response)

**CHAIRMAN GRAYBILL:** If not, all in favor of Mrs. Bates' and Mr. Harper's—

**DELEGATE CHAMPOUX:** Roll call.

**CHAIRMAN GRAYBILL:** —Harper's motions to reconsider will vote Aye on the voting machines; and those opposed, vote No on the voting machines. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Nay |
| Choate | Aye |

| | |
|---|---|
| Conover | Nay |
| Cross | Aye |
| Dahood | Absent |
| Davis | Excused |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Nay |
| Furlong | Absent |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Absent |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Nay |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 58 delegates voting Aye, 32 voting No.

**CHAIRMAN GRAYBILL:** 58 having voted for reconsideration and 32 against it, we will reconsider Sections 9, 10 and 11. Now, the Chair has had typed—but only for the Chair—Section 9 as amended; and I'll read it to you carefully; and you might check your books, because that we did yesterday—you may—or Saturday—and you may have forgotten: "State Board of Education. The Board of Public Education and the Board of Regents of Higher Education, as hereinafter designated, shall together constitute the State Board of Education, which shall meet periodically on matters of mutual concern. The State Board of Education shall submit unified budgets. In case of a tie vote at such meeting, the Governor may cast a tie vote." That's the way it reads at the present time. The two boards shall together constitute the State Board of Education, which shall meet periodically on matters of mutual concern. The State Board of Education shall submit unified budget requests. In case of a tie vote at such meetings, the Governor may cast a tie vote—or may cast a vote.

Very well, Mrs. Bates, do you wish to make your motion?

**DELEGATE BATES:** Yes, Mr. Chairman. You have read my motion. I would like to state that this motion would provide the flexibility for a—one or more boards, set by the Legislature, with the powers and duties prescribed and regulated by law. However, I would like to amend that to read "the Superintendent of Public Instruction"—and

I have "Superintendent of Schools", but it should be "Public Instruction".

**CHAIRMAN GRAYBILL:** Very well, we'll consider it so amended.

**DELEGATE BATES:** Okay, thank you. I think it pretty well states for itself.

**CHAIRMAN GRAYBILL:** The Chair would like to observe that if there are other stylistic or minor changes you might want to make in either this or Mr. Harper's amendment, let's adopt one or the other or reject them first, and then we'll have an opportunity to amend them in detail if we want to.

Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I would like to offer my proposal as a substitute for Mrs. Bates'.

**CHAIRMAN GRAYBILL:** All right, I guess we don't need to read yours again, do we?

**DELEGATE HARPER:** I don't think so.

**CHAIRMAN GRAYBILL:** It's—the purpose—the substance of Mr. Harper's is that we would renumber 9, 10 and 11, sub. 1, sub. 2 and sub. 3, and then put the language—and I'm sure you all have before you—for sub. 1 in in place of the present sub. 1. And that will be a substitute motion for Mrs. Bates', and we may discuss both of them.

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Yes—if you'll look at present Section 9, it uses, at the end of that first sentence, "which shall meet periodically on matters of mutual concern". Well, that didn't seem like much of a clause to me, and I thought we could put just a period—just state the composition of the board of these—made up of these other two boards; and then, really, the only thing different is this little sentence: "It shall be responsible for long-range planning and evaluation of policies and programs for the state's educational systems"—plural—and then we include the rest of the language as in Section 9 as we adopted it yesterday—or Saturday: "It shall submit unified budget requests"—and then with exactly the same wording about the Governor casting a tie-breaking vote. I don't think I need, really, to speak on it, and I don't want to prolong it. If it's something that the body likes as a way of expressing it, fine; if not, I'm perfectly agreeable to—either way.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I'll speak—may I speak to both of them at once, sir?

**CHAIRMAN GRAYBILL:** Surely.

**DELEGATE CHAMPOUX:** All right, very briefly. What we have in Mrs. Bates' amendment here—first of all, it gets rid of all this work we've done—we've been over this whole thing for nearly 2 days—and again we get back to the same old problem where the general control and supervision is going to be established in these boards, the same old problem that we have in the 1889 Constitution, because if you look at the last sentence, it says right here—they give the power, but then they take it away—"whose powers and duties shall be prescribed and regulated by law". There it is. It doesn't get at the problems we have mentioned. Now, the question, of course, is why, if the Legislature is so good about solving these problems, why haven't they solved this problem for 82 years? All right, what's going to happen under this is the boards are truly going to become political. You want to get political? Buy this amendment. And what's going to happen if the Legislature doesn't like a board? They're going to pull that board out after maybe 2 years in office and then put it in 3 years later. You're going to have a dance going on here. Who is going to do the appointing? You want to get political? You're going to find out that's going to really be political. Now, insofar as Mr. Harper's amendment is concerned, I am not in disagreement with it at all. I think, perhaps, George, that the first section could be left to Style and Drafting, but I am in favor of his amendment, and I absolutely oppose the Bates amendment.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, would Delegate Harper yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Harper?

**DELEGATE HARPER:** Yes, I will.

**DELEGATE ARBANAS:** I have a little problem with regard to the picture of sort of one board sitting in judgment of the work of another board, when you use the word "evaluation", and I wonder if you don't really mean "to plan and evaluate common programs and common policies", and that—if that were added, I could be very comfortable with it because it would take away that picture of, you know, the Higher Education Board really evaluating what the other board, you know, decided or wanted to do.

**DELEGATE HARPER:** Mr. Chairman, may I respond?

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** I think one way you look at that, the word "common" would do what you're thinking about. On the other hand, it might limit it to the fact that unless a thing were held in common between the elementary school and the higher university system, then you shouldn't discuss it. And what I'm talking about is that some board, our State Board of Education, takes an overall look and says, "Well, okay, we've only got so many resources and we want to get certain total objectives accomplished", as we said we would do in the very first section of this educational article, and somebody ought to take this overview of it. That's all we're trying to write in here.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Would Mr. Harper yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Harper?

**DELEGATE HARPER:** (Inaudible)

**DELEGATE BERG:** Somehow or another, I am married to the word "coordinate" today, and I was wondering if you might include coordination as well as planning and evaluation of the policies and programs of all systems?

**DELEGATE HARPER:** Yes, Mr. Berg, I think you're married to a pretty good word in this area here, and your suggestion is for long-range planning—?

**DELEGATE BERG:** Planning, coordination and evaluation of policies.

**DELEGATE HARPER:** Mr. Chairman, I would accept that.

**DELEGATE BERG:** Mr. Chairman, I—

**CHAIRMAN GRAYBILL:** All in favor of allowing Mr. Harper to amend by adding the word "coordinate"—"coordinating"—say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** All right, Mr. Harper, "coordinating" is after "planning".

**DELEGATE HARPER:** Fine. Thank you, Mr. Berg.

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, I think that with Mrs. Bates' proposal, we are finally getting down to the thing that we came up here for. There was a lot of mistrust of the Legislature in 1889, but there seems to be a whole lot more now than there was then. This gets down to the basics. I will support it, because I think that we have been just purely legislating all day long and on Saturday.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. President, would Delegate Harper yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Harper?

**DELEGATE HARPER:** Yes.

**DELEGATE ERDMANN:** When he speaks at the end of his first paragraph of making the present Section 11 becoming Section 9, subsection 3, does he mean the present section under the majority report, or is he speaking of Delegate Rollins' amendment this morning which replaced the other one?

**DELEGATE HARPER:** I'm glad, Mrs. Erdmann, you asked that. I should have said that, in my amending—or substitution for Mrs. Bates' motion, since she dealt with all three of those sections—that I would contemplate this revision of Section 9—our present Section 9—and then contemplate leaving Section 10 and Section 11 exactly as we have passed them, as amended.

**CHAIRMAN GRAYBILL:** In other words, it's the reopened sections, Mrs. Erdmann, the ones we passed this morning. It would be Mr. Rollins' for Number 11, and it would be Number 10 as amended by a few little interlineations this morning. We put in the word "Commissioner of Higher Education", et cetera.

**DELEGATE HARPER:** And now I am offering no amendment to those Sections—10 and 11.

**CHAIRMAN GRAYBILL:** Ten would become sub. 2 and 11 would become sub. 3.
Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I was wondering for a while if the—Delegate Harper still had two boards, but I see now we still have two boards. Everything—all that you've done is going to let these two meet on—together. I think this is all—now, I think this problem—and we've probably debated a long time—I don't want to take a great length of time, but I think one person has been—one outfit has been left out entirely that we've seen. We have the University System and they have their University presidents. Then we go down and we see the state administration down here, but all of a sudden we forgot these little fellows that run on—I believe it's the first Saturday in April every year—these school board trustees—and we have certainly forgot them in all of our debate today. People that have stood up—they spend nights, they spend days, they get nothing for it, all they do is get complained at every time there's a school board meeting—and these people have certainly been forgot. I wondered if there was no way we would even let this group of dedicated people throughout the State of Montana have some little say somewhere in the educational setup. I'm afraid of this thing now—that we're building a great setup—maybe I'm wrong—but I'm afraid we are building the State of Montana practically into one school district—be run out of a building up here—and that's what's going to happen to this local schools we've discussed. University—university—and I'm glad—they're great people, but we have to get the child up to the university first. This is quite a little thing, getting him up there, and I just hope—I think with one board looking over the whole situation, subservient to the Legislature—now, I want this understood—I think we should keep this—all the education under the Legislature, whether it's university or wherever it is, and—because if we're going to have statewide mill levies, the Legislature is going to have considerable to say about the appropriations, and I think we should have everything under the Legislature, and so I hope—I certainly hope Mrs. Bates' amendment prevails.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I'm going to be very happy when you don't have to recognize me any more, believe me. Charley, I think you were out of the room the other day. We passed a section in there concerning the school boards. Were you here when we passed that? All right. So they are included, and they are in control of the local situation. Also, if you will note, the Habedank amendment has them included in terms of getting the money and doing the stuff at the local level, so I think they have been—as a matter of fact, they are probably 200 percent more involved in this Constitution than they ever were in the last, so I believe they are well provided for.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman, I feel that the Harper amendment certainly helps this—these three sections; however, I would just like to point out that this is one of the difficulties when in this Constitution we try to do the legislating. We are—a lot of people fought for two boards; now we're coming back and saying, "Now, this is going to be one board for here, and then they will split", and so on. This just really kind of gets you back to one, except in some respects it does a lot of tying of the hands of the people in government over the next 50 years, if this is adopted by the people. We're trying to legislate this and trying to legislate that; and sitting here today, it seems to me as though a fair amount of this document has been written to satisfy the present State Superintendent of Education. Now, maybe she will be the present Superintendent—or will be the Superintendent for the next 20 years or so, but someday somebody is going to replace her, and maybe they won't like it. I really have to agree with Mr. Davis, this morning, when he said that there are two monstrous bureaucracies, more or less, in the state government. One of them is the Highway Department, which this body did some clipping of feathers on last week, I believe it was, and the other one is the Education Department. They both spend a whale of a lot of money, and the more we get into legislating in this Education Article on the Board of Education and so on, the more we constitutionalize the bureaucracy that can happen in the Education Department. So, I—like I say, I believe Mr. Harper's amendment is an improvement, but I would certainly go for the Bates amendment—or substitute, because it leaves it free; it isn't tying anything down. People say we want to write a document for the future. How many of you know what the future is in 40 years and what the state will need? I wish, before you vote, you would stop and think about what the future will be and how you're tying things—or how things would be tied down under the present article. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman, I think we've discussed this at great length, and I don't want to prolong it, but I would like to thank the Committee of the Whole for the work they have done in clarifying and developing the proposal which the majority brought in of this committee. And I think, with Mr. Harper's cleaning up of some of the concepts that we've struggled to kind of put together here on the floor, that we have a very strong foundation for the foreseeable and long-range future of our children; and I, for one who has some children who may be thinking of a university program in this state, am deeply grateful for the work of the Committee of the Whole and the fact that we are now in a position where we will have two strong boards and then, working together under a State Board of Education, a coordinated effort; and I ask you to support this proposal that Mr. Harper has brought in and that we have developed here in the Committee of the Whole.

**CHAIRMAN GRAYBILL:** Mr. Rollins. Pass? No? Okay.

**DELEGATE ROLLINS:** I'll pass.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, I think I have a suggestion that may be a compromise and settle this whole thing, and I'll just very briefly—and then if there's any support, then we might go from there. I would like to say this: "There shall be a State Board of Higher Education, who shall meet periodically with the State Highway Commission to determine how all state moneys shall be allocated to all branches and departments of government. The two boards, jointly, shall be responsible for notifying the Legislature of their decision at least 3 days"—and you note we get the 3-day notice in here—"at least 3 days before the deadline date set for such appropriations each year." (Laughter) I think that would probably take care of the whole—

**UNIDENTIFIED DELEGATE:** Roll call. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Hanson, can't you get the Supreme Court in there somewhere? (Laughter)

**DELEGATE ROD HANSON:** I thought of making this subject to the Supreme Court decisions, but I thought that might complicate the thing a little. (Laughter)

**CHAIRMAN GRAYBILL:** Very well, Mr. Scanlin, you're still up.

**DELEGATE SCANLIN:** Mr. Chairman, I only wish to say that the Harper caucus has clarified many of the questions I had concerning the article before. Thank you very much.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Right now, I'm in a dilemma. I like the Harper amendment; but suppose we vote on that and reject it and go over and vote on Bates' amendment and reject that, then we will have rejected a good suggestion here by Mr. Harper. So I think we should probably go back and vote on Mrs. Bates' amendment first, and see how we stand. I think I know, but if we eliminated that, then we could go back and see how the Harper amendment works into our 9, 10 and 11 sections. So with that, Mr. Chairman, I shall move that we pass consideration of the Harper amendment until after we have voted on the Bates amendment.

**CHAIRMAN GRAYBILL:** Well, Mr. Aasheim, the Chair observes that it's six of one and a half dozen of the other, depending on who's the first one up, and when we've done that, Mrs. Bates might want a second motion to reconsider and reverse it. I don't see why the body can't decide whether they like one or the other. The Chair thinks you're out of order in making a motion to restructure the order that the people have structured. Now, if you want to challenge that, okay.

**DELEGATE AASHEIM:** Mr. Chairman. No, I'm not going to challenge your decision here. I'm just trying to be logical, because, actually, it wouldn't take long to decide on the Bates amendment and—

**CHAIRMAN GRAYBILL:** Well, the point is, the body will know whether it's for or against the Harper amendment. If it's against the Harper amendment, then we'll give them a chance on the Bates amendment. If it's against the Bates amendment, why, send up an amendment, and we'll start on the Harper amendment all over again, if you want to. But I don't see that it does any good to switch, because as soon as you switch, then maybe one of the ones that made them—You know, I don't choose the order here; they choose it—unless they disagree, then I choose it. And I just don't like to get in the business of starting sorting out on the floor by secondary motions what order things are going to be taken up in. I think the issue is on Mr. Harper's motion, and if we're through discussing it, we'll have a roll call vote on it. All right, the point of Mr. Harper's motion is, first of all, to number the subsections 9, 10—to number Sections 9, 10 and 11 as—as 9, sub. 1, sub. 2 and sub. 3—I don't think that's too difficult or important. Secondly, to substitute for Section 9 the language on subsection 1 of Section 9 shown on his amendment, and we've added to that the word "coordinating". Now, does anybody want me to read that or read yesterday's Section 9?

(No response)

**CHAIRMAN GRAYBILL:** I think everybody's got the picture. All right. So many as are in favor of Mr. Harper's amendment, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, we'll close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Excused |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Excused |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Absent |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Absent |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Nay |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |

| | |
|---|---|
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Absent |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 71 delegates voting Aye, 20 voting No.

**CHAIRMAN GRAYBILL:** Very well, 71 having voted Aye and 20 No, you have adopted Mr. Harper's amendment and Section 9 is now styled subsection 1, State Board of Education, with the language—the Harper language as amended. The vote was 71 to 20. Then Section 10 is now styled subsection 2; Section 11 is now styled subsection 3. Now, before we close up the reconsideration of 9, 10 and 11, Mrs. Bates or Mr. Aasheim or anyone else, do you want to take another stab at it?

Mrs. Bates.

**DELEGATE BATES:** Is my motion still on the floor, or do I have to—

**CHAIRMAN GRAYBILL:** No, your motion is, at the moment, wiped out, because his was a substitute motion.

**DELEGATE BATES:** Well, I shall reinstate it.

**CHAIRMAN GRAYBILL:** Do you want to renew it?

**DELEGATE BATES:** I move that we delete Sections 9, 10 and 11 for my motion, and you've all heard it. I don't have to reread it, I'm sure. In—I, too, believe, like Mr. Burkhardt, that the majority did a beautiful job with their ideas; and I think if they will present these to the Legislature, they may get what they want. I asked for your consideration on my substitute motion because I feel it will provide the flexibility. When Mr. Champoux mentioned that this could be too political, I can't see that it would be any more political than the Governor appointing any other board or—with the sanction of the Senate, which is done in most cases of boards, and I imagine this is the way the Legislature would structure a Board of Education. At this, I'll so move.

**CHAIRMAN GRAYBILL:** Very well, Mrs. Bates has renewed her motion as to Sections 9, 10 and 11— or, now, as to Sections 9, sub. 1, sub. 2 and sub. 3. The effect of it would be to replace 9, sub. 1, sub. 2 and sub. 3, that's the Harper amendment, the Rollins' amendment, and Section 2—or Section 10 as it was this morning, and put in place of it the language: "The general control and supervision of the State University and various other state educational institutions shall be vested in the Superintendent of Public Instruction and one or more State Boards of Education, whose powers and duties shall be prescribed and regulated by law."

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President, I rise to resist the substitute—or the new amendment suggested by Mrs. Bates. When I first read this amendment, it appealed to me as taking care of the purists and all those people who want nothing in the Constitution that is legislative in any way whatsoever. However, as I studied it further and as I study what we have done in connection with the majority proposals adopted, it seems to me that the proposal adopts the best ideas of Mr. Gysler, Mr. Driscoll and Mrs. Bates into what we think education should be governed by today. Admittedly, this situation can change in the future, but we are writing a Constitution for today as well as tomorrow. And I would suggest to you that you also consider, in connection with this, that if this does not prove to be satisfactory, you have adopted an amendment procedure whereby the Legislature can submit the Mrs. Bates amendment to the people, and if they don't do that and the people aren't happy, we have adopted Mr. Mahoney's suggestion whereby the people by initiative can submit Mrs. Bates' amendment to the people and correct the situation. I urge you that we take care of today and hope that it takes care of tomorrow.

**CHAIRMAN GRAYBILL:** Very well, we'll have a roll call. Are you all through debating?

(No response)

**CHAIRMAN GRAYBILL:** So many as shall favor Mrs. Bates' motion, which has the effect of substituting one paragraph for 9, 10 and 11—or 9, 1, 2 and 3—so many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Excused |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Aye |
| Dahood | Nay |
| Davis | Excused |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Absent |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |

| | |
|---|---|
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Absent |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 34 delegates voting Aye, 59 voting No.

**CHAIRMAN GRAYBILL:** 59 having voted No and 34 having voted Aye, the motion fails and we're back to 9, sub. 1, 2 and 3. Is there any more discussion?

Mr. Ask.

**DELEGATE ASK:** Mr. Chairman, a point of information. The Harper amendment—did he delete the words "and administration" or—?

**CHAIRMAN GRAYBILL:** Yes. In what are you talking about? In—

**DELEGATE ASK:** In sub. 1, there, "policies, programs and administration".

**CHAIRMAN GRAYBILL:** He deleted the words "and administration"; it says: "It shall be responsible for long-range planning, coordinating and evaluation of policies and programs for the state's educational system."

**DELEGATE ASK:** Mr. Chairman, I move that we put the words "and administration" back in again. I think they're quite important. I like this two boards and this sub. 1, here, "for long-range planning and coordination and evaluation of policies, programs, administration". I think this is part of it. This is probably one of the most important words, I think, in this whole section, and therefore I would like to see it be—those two words be put back in again.

**CHAIRMAN GRAYBILL:** Mr. Ask has an amendment to Section 9, sub. 1, as presently adopted, to add in the words "administration". I have scratched them out too well here, but I think it says "and administration", doesn't it? What's it say? "—and administration for the state's educational system"—that's four lines from the bottom on Mr. Harper's amendment.

Mr. Ask, do you want to discuss it any further?

**DELEGATE ASK:** Yes, Mr. Chairman. We now have two boards, which I think is a good idea, but somewhere along the line they're going to have to coordinate all their activities. And we have it in here that they're going to have long-range planning, evaluation of policies and programs, and evaluate the administration, and I think this is an important aspect of it. We can't have the administration for two boards going off in different directions, and I think they should be able to evaluate and do some planning and programming on administration also. I think these are real important words. In other words, we have two boards that are going to go out in their separate fields but they are going to work together very closely in certain areas here, and I think we're—this is what we're after. And I would submit that we should include those words back in again. Thank you.

**CHAIRMAN GRAYBILL:** Is there any discussion?

Mrs. Blend.

**DELEGATE BLEND:** Mr. Chairman, I rise in support of Mr. Ask's amendment. I have occasion to watch Central Purchasing in the State of Montana from another angle, and I believe that I can say that I do not think that the University System would create any greater cost by accident or misuse of funds than Central Purchasing seems to manage in other areas by the pure massiveness of the system. I think if we are to have a responsive University System, that we should allow them to administer their own departments, and I support the amendment.

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates, I think I would like to resist the addition there for two reasons. First of all, when you were talking, Mr. Ask, it seemed to me you were talking about planning, evaluation about administration, and that's quite a different thing than the actual administration of the total system. It seems to me you get into a place where that first board would override—or could override the other two boards rather arbitrarily. In fact, it might even be—and that would be my second reason—that if you took that word literally, it might even be the disappearance of the two boards.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, maybe I should have explained a little bit more as to why I wanted to delete the words "and administration", and it follows what Mr. Arbanas has just said. In the Rollins amendment, for example, under Section 11, we said that "the government and control of the Montana University System shall be vested in a Board of Entrants—Regents, who shall be selected"—and so forth. "They shall have full power, responsibility and authority to supervise, coordinate, manage, control"—we used similar wordings in—with the other board, and we thought perhaps the words "administration"—we get so many people dabbling with administration that we might get conflicts of interest there; whereas, we thought that an overall look at the policy and program, without using the word "administration", would accomplish what we want without running into the possible conflicts between having three different groups delving into specifics of administration.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I rise in opposition to the addition of those two words. It's going to have the effect of taking the true direction of these two boards away from the individual members of the boards in terms of specific area control, and it's going to put it in the hands of this one board combined. And this isn't what we've worked on all this time to do, and maybe Mr. Ask didn't see that as he suggested that. That's the bad point about that, and I oppose the addition.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mr. Ask's motion to add the words "and administration" back into Section 9, sub. 1—

**UNIDENTIFIED DELEGATE:** Roll call.

**CHAIRMAN GRAYBILL:** —so that it reads: "It shall be responsible for long-range coordination, planning"—No, let's see—"planning, coordinating and evaluation of policies and programs and administration for the state's educational system".

**DELEGATE CHAMPOUX:** Roll call, please.

**CHAIRMAN GRAYBILL:** So many shall be in favor, vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Do the rest of you want to vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Nay |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Excused |
| Blaylock | Absent |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Absent |
| Cate | Nay |
| Champoux | Nay |
| Choate | Absent |
| Conover | Nay |
| Cross | Nay |
| Dahood | Absent |
| Davis | Excused |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Nay |
| Erdmann | Absent |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |

| | |
|---|---|
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Absent |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Absent |
| Lorello | Nay |
| Mahoney | Absent |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Absent |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Absent |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 18 delegates voting Aye, 66 voting No.

**CHAIRMAN GRAYBILL:** 66 having voted No and 18 Aye, the motion fails. Is there other discussion of Sections 9, 10 and 11, which are now open?

Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, in Section 6—I mean, sorry—in Section 10, on line 9, right near the end of the line—

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE BOWMAN:** —we're talking about 6-year overlapping terms for the Board of Public Education. Then, in Section 11, Mr. Rollins' amendment, as we adopted it, we decided to delete the 6-year overlapping terms. Now, I think, in an effort to be consistent, we should delete the 6-year overlapping term phrase in Section 10, and I so move.

**CHAIRMAN GRAYBILL:** I think you have an interesting thought—point. Very well, Mrs. Bowman has an amendment to Section 9, sub. 2, to delete the words "6-year", on line 9, page 6—about the middle of sub. 2, if you are on the other page—in order to make it confirm—conform to sub. 3.

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Did we take a vote on the 6-year terms in the other—to delete?

**CHAIRMAN GRAYBILL:** We took a vote when we—we took a vote on Mr. Rollins' amendment, and the vote was close, but the vote took out the 6-year term. The vote was 46 to 42 to take out the 6-year term and leave it open—leave the term open for the Legislature.

**DELEGATE HARBAUGH:** Well, Mr. Chairman, I would just like to say that I really think we ought to have the 6-year terms in there, and the reason that the committee put these in in the first place was so that there would be continuity on these boards from one gubernatorial election on into the next and so that the whole board would not change with the change in administration, and I really think that it ought to be left in there. I think it ought to be put back in the section where we took it out.

**CHAIRMAN GRAYBILL:** The Chair would only like to observe that if you have overlapping terms, it's bound to—the board is bound not to change in an administration regardless of the length of the term, unless it was awful short. But we've left it to the Legislature now, and Mrs. Bowman's motion is to take it out of section—subsection 2.

Mrs. Bowman, for what purpose do you rise?

**DELEGATE BOWMAN:** Well, I suppose as long as I made the motion, I maybe ought to say something about it. (Laughter)

**CHAIRMAN GRAYBILL:** Suit yourself, Mrs. Bowman. (Laughter) You have the floor, Mrs. Bowman.

**DELEGATE BOWMAN:** I do not speak very often. I think that we did the right thing to take it out of Mr. Rollins' amendment; and I think we should take it out here, because I think that, even though the Legislature might indeed decide on a 6-year term, that if this proves to be, for some reason, wrong—either too long or too short—they can change it; and I think it's a mistake to put the term in the Constitution.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, in checking on Mr. Rollins' amendment, it does have confirmation by the Senate under regulations provided by law. Now, we don't have this here. I'm not sure whether it's absolutely necessary; but I would guess that, if you're going to have terms set at all, that it would be a good idea that if we deleted the 6-year overlapping term—or the 6 years from the overlapping terms, that we should add "under regulations provided by law"; and I would like to so amend Mrs. Bowman's amendment.

**CHAIRMAN GRAYBILL:** Do you want to include the deletion of the 6-year term, Mrs. Eck?

**DELEGATE ECK:** Yes.

**CHAIRMAN GRAYBILL:** Very well, Mrs. Eck has made an amendment to Mrs. Bowman's motion. She will leave in the deletion of the term "6-year", but after the words "overlapping terms", she would put ", subject to confirmation by the Senate under regulations provided by law", the purpose being to make this identical in subsection 2 with the language we've now adopted as Rollins' amendment in subsection 3. Is that correct, Mrs. Eck?

**DELEGATE ECK:** Yes.

**CHAIRMAN GRAYBILL:** Very well, the point, then, is if you vote for the Eck amendment, you both wipe out the 6-year term and you add ", subject to confirmation by the Senate under regulations provided by law". Is there further discussion?

Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, the "under"—the "with"—"of"—"the confirmation of the Senate" is already there. It precedes the "6-year term" now, so that I think that just after "overlapping terms", I would need the "under regulations as provided by law".

**CHAIRMAN GRAYBILL:** Or we could tell Style and Drafting to make them the same. Mr. Style and Drafting is nodding his head. Would you like to withdraw yours, and he says he'll make them the same if we—Mrs. Eck has withdrawn hers. We're back to the issue of deleting the "6-year term". Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mrs. Bowman's motion to delete "6-year term", say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's deleted. Are there other amendments to subsections 9-1, -2 and -3?

Mr. Scanlin, do you want to make an amendment?

**DELEGATE SCANLIN:** No, I just wanted to make an observation.

**CHAIRMAN GRAYBILL:** Is it a short observation?

**DELEGATE SCANLIN:** It sure is.

**CHAIRMAN GRAYBILL:** Okay, shoot.

**DELEGATE SCANLIN:** Mr. Chairman, I would trust the Legislature to realize that if there were seven members, they would fix 7-year terms. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 9, as amended, of Education and Public Land Committee Proposal Number 10, it recommend that the same be adopted.

**CHAIRMAN GRAYBILL:** Section 9, as amended, includes 9, sub. 1, 2 and 3, which is 9, 10 and 11 of the old.

Now, Mr. Heliker, for what purpose do you rise?

**DELEGATE HELIKER:** I rise to propose a further amendment.

**CHAIRMAN GRAYBILL:** Have you got it in writing?

**DELEGATE HELIKER:** It's only one word.

**CHAIRMAN GRAYBILL:** Let's have it.

**DELEGATE HELIKER:** It is to the renumbered Section 9, subsection 3, otherwise known as the Rollins amendment. I move to amend the last line of that Rollins amendment, before the word "audit", by adding the word "post".

**CHAIRMAN GRAYBILL:** Well, since you—I suppose you know what you are doing. Okay, Mr. Heliker proposes to put the word "post" in in the place of where we used to have "Legislative" and where we have nothing now, so that the sentence reads: "The funds and appropriations under control of the Regents shall be subject to the same post-audit provisions as other funds of the state."

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, the record of the debate on this is perfectly clear that that's what we meant. I propose simply that we clear up the language also to make it clear that we mean "post-audit".

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** (Inaudible)

**CHAIRMAN GRAYBILL:** Mr. Mahoney, hit a couple more buttons.

**DELEGATE MAHONEY:** If you used just the word "post-audit" I think you would exclude the word "Legislative Audit" or any other audit. You would be limiting it to one audit. It should be a post-audit.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, that is not my intention. The Legislative Audit is a post-audit. It would not eliminate the Legislative Audit.

**DELEGATE MAHONEY:** A post-audit, as I understand it—you'd limit it and you could have a post-audit and you might not limit—I think you'd better leave it the way it is with just one—no words in there.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Heliker's motion to add the word "post", say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as are opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and the word "post" is out.

Now, Mr. Murray, you want to renew your motion?

**DELEGATE MURRAY:** Mr. Chairman, I renew my motion as previously stated.

**CHAIRMAN GRAYBILL:** All right. Now, the motion of Mr. Murray's is to finally adopt 9, sub. 1, 2 and 3, which is the old 9, 10 and 11. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as opposed, vote No.

(No response)

**CHAIRMAN GRAYBILL:** You may show it as a unanimous vote on your ballot, Mr. Champoux. All right, 9 is therefore closed up. Style and Drafting, naturally, will renumber the other sections. Now, are there other amendments?

(No response)

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I move that the committee rise and finally report.

**CHAIRMAN GRAYBILL:** The motion is for the committee to rise and finally report on the Education and Public Lands Committee Proposal Number 10. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered.
Mr. Rygg, for what purpose do you rise?

**DELEGATE RYGG:** I would like to make a committee announcement at this time, if I may.

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE RYGG:** I assume we're going to have a recess rather soon, and I would like to call a meeting of Revenue and Finance immediately upon recess in Room 437.

**CHAIRMAN GRAYBILL:** Very well.

(Proceedings moved from Committee of the Whole to Convention, President Graybill in Chair)

**PRESIDENT GRAYBILL:** Will the clerk please read the Committee of the Whole report—title and signature.

**CLERK HANSON:** "March 13, 1972. Mr. President. We, your Committee of the Whole, having had under consideration report Number 10 of the Committee on Education, recommend as follows: that the committee rise and finally report on the Education Article Number 10. Signed: Leo Graybill, Jr., President."

**PRESIDENT GRAYBILL:** Does anyone care to have the report read in full?

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move that the Committee of the Whole report be adopted and that Education and Public Lands Committee Proposal Number 10 be referred to the Committee on Style and Drafting.

**PRESIDENT GRAYBILL:** Very well, you've heard the motion to adopt and refer this committee proposal to Style and Drafting. All in favor of the motion to adopt it, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed?
(No response)

**PRESIDENT GRAYBILL:** Very well, it's assigned to Style and Drafting.
Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move that the Convention recess for 15 minutes, or until 4:45 p.m. this day.

**PRESIDENT GRAYBILL:** Very well. Before we vote on that, the Chair would like to announce that we'll take up Judiciary and perhaps Natural Resources and we'll work at least until 6:00 to try and get as much of those done as possible. The motion is to recess for 15 minutes. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed?
(No response)

**PRESIDENT GRAYBILL:** So ordered.

(Convention recessed at 4:30 p.m.—reconvened at 4:55 p.m.)

**PRESIDENT GRAYBILL:** The committee will be in session. The Convention will be in session. Mr. Murray, without objection, the Chair is going to ask that we be on Order of Business Number 3, Communications. Is there any objection?
(No response)

**PRESIDENT GRAYBILL:** Very well, the purpose of going to Order of Business Number 3—I've had placed on your desks a memorandum from me to the delegates, and it merely makes suggestions for two committees and for—it gives you some idea of the thinking, at the moment, on the voter education problem after the Convention adjourns, and unless there's objection, I shall refer this memorandum to Rules, and it says in the memorandum that Rules will hold a hearing—or a meeting at 8 o'clock in the morning to consider this, because we need to prepare a resolution of some nature to accomplish either what's suggested here or whatever else may be suggested. Is there any objection to referring this memorandum to the Rules Committee?
(No response)

**PRESIDENT GRAYBILL:** If not, all in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, Nay.
(No response)

**PRESIDENT GRAYBILL:** Okay. Mr. Murray, this is now referred to you. And is 8 o'clock in the morning a good time? Is that available?

**DELEGATE MURRAY:** Yeah, Mr. President, 8:00 is a—

**PRESIDENT GRAYBILL:** No?

**DELEGATE MURRAY:** Excuse me just a minute. I think 8:00 will be fine, and we'll commence. And I may have to withdraw for a few minutes, but I think we'd better call it for 8 o'clock in the morning because I know not what other time we would have.

**PRESIDENT GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. President, I would like to bring to the attention of the Chair and the delegates that, 8 o'clock in the morning, the Bill of Rights Committee is going to meet in the Governor's conference room for the purpose of hearing from the press with respect to the controversial right-to-know, and I know a number of delegates are interested in attending. I think that's going to be very important to all of us, and for that reason, I should like to have the Chair keep that particular meeting in mind.

**PRESIDENT GRAYBILL:** Very well. Our only point—this doesn't have to go that fast, perhaps, but it ought to be done promptly so these committees can get to work, and we are shooting for getting them appointed and the resolution adopted on Wednesday. Do you want to have your meeting Tuesday—on adjournment or Tuesday—well, we can't have it Tuesday night—do you want to have it tonight?

**DELEGATE MURRAY:** Mr. Chairman, I would prefer to meet Tuesday at the noon recess and have lunch in the committee room and take the matter up at that time, since Bill of Rights does have this important meeting for which we have some out-of-town people scheduled.

**PRESIDENT GRAYBILL:** Very well, let's take this matter up Tuesday on adjournment in the Rules Committee rooms, so if anybody has some suggestions, you can come at that time or you can write them up and give them to Mr. Murray. The things I have put in my memorandum are suggestions only, and we would like to hear your suggestions. On the other hand, we do have to act deliberately and soon on this matter. Very well, that takes care of that.

Now, Mr. Murray, maybe without objection, we can be back on Order of Business Number 10.

**DELEGATE MURRAY:** Since we are on Order of Business Number 10, Mr. President, I move we resolve—the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

**PRESIDENT GRAYBILL:** The motion is to resolve this Convention into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So ordered.

(Convention resolved into Committee of the Whole with Mr. Graybill presiding)

**CHAIRMAN GRAYBILL:** Before we take up the Judiciary Style and Drafting report—Mr. Schiltz, is it correct that we put in an amended page 4 and an amended page 11; is that correct?

**DELEGATE SCHILTZ:** That's correct, Mr. Chairman, and they've been distributed in the last 15 or 20 minutes, so you might—with a lot of other stuff—so you might have to look for them.

**CHAIRMAN GRAYBILL:** You might want to amend your books by striking out your existing page 11 and page 4 so you don't get mixed up. Now, members of the commitee, it might be easier if we followed along on page 7 through the Judiciary Article so that we can see what's been changed. You'll remember that our method is to read the section number only and let the Chairman of Style and Drafting discuss it. Mr. Clerk, do you want to read, beginning on page 7, Section 1 of the Judicial Style and Drafting proposal? Just Section 1 and the title.

**CLERK HANSON:** "Section 1. Judicial power."

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 1 of report Number 5, Style and Drafting Committee, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** We have changed "a" to "one" on line 8 to conform to the same language in the Supreme Court, U.S. We've added "justice courts". Otherwise, minor style changes.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 1?

(No response)

**CHAIRMAN GRAYBILL:** Very well, all in favor of Style and Drafting's proposal on Section 1 of the Judicial Article, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** Section 1 is adopted. Section 2.

**CLERK HANSON:** "Section 2—Supreme Court Jurisdiction", four subsections. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does rise and report, after having had under consideration Section 2, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted.

Mr. Chairman, the only changes in sub. 1 are style changes. I changed the title. Nothing significant to note.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, I have a joint motion.

**CHAIRMAN GRAYBILL:** Very well, there's a motion here from Holland and Berg.

**DELEGATE HOLLAND:** By Mr. Berg, who is the author of the minority report, and by myself as Chairman of the committee. We move to suspend the rules for the specific and limited purpose of amending Section 2, subdivision 1, line 15, of the Style and Drafting report on Judiciary by adding the following words after the word "corpus": "and such other writs as may be provided by law".

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the motion is to suspend the rules to allow the amendment of Section 2, sub. 1, by adding, at the end of the section, after "habeus corpus", a phrase: "and such other writs as may be provided by law".

Now, on the issue of the suspension of the rules only, Mr. Holland, do you wish to speak?

**DELEGATE HOLLAND:** Yes. As the Convention may know, the Convention first decided to consider the minority report, and following the extensive debate on Saturday, some of the members of the committee and some of the people who weren't on the committee got together and did a certain amount of rewriting and, under the stress, overlooked that this language would eliminate certain basic writs which are necessary for the jurisdiction of the Supreme Court in the orderly conduct of its business. Several of us noted this. As many members of the committee could—got together saw that this had been eliminated just by oversight, and I wish to—and on behalf of Mr. Berg, who is—as I say, had written the minority report—we wish the Convention, for the sole purpose of adding these words, to suspend the rules. Now, I realize that this is an unusual action, but seeing as how a majority of the committee are in favor of this suspension, it would take but a very few minutes and, I expect, very little floor debate. We would ask the Convention to suspend the rules for this limited and specific purpose only.

**CHAIRMAN GRAYBILL:** Very well. For those of you who may want to be refreshed on this, the rule is Rule 74 and it says that one or more rules may be suspended for a specific purpose by an affirmative vote of two-thirds of the delegates present or a majority of all the delegates, whichever is lesser—so it's 51 votes or two-thirds. And the specific purpose has been properly stated by Mr. Berg and Mr. Holland. Is there other discussion of the motion to suspend the rules?

(No response)

**CHAIRMAN GRAYBILL:** If not, all in favor of suspending the rules, please indicate by voting Aye on the voting machines; and all opposed, No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, 77 having voted Aye and 2 voting No, the rules are now suspended.

Now, Mr. Holland, do you wish to make a motion to reconsider Section 2, sub. 1?

**DELEGATE HOLLAND:** The rules having been suspended, we hereby move that the Style and Drafting report, at the place indicated, be amended by adding the following words and sentence which—

**CHAIRMAN GRAYBILL:** Wait a minute, now. You've got to move to reconsider. We've got to go through all the steps, I think. Isn't that right, Mr. Murray?

**DELEGATE MURRAY:** (Nodding yes)

**CHAIRMAN GRAYBILL:** Yes. Just say, "I move to reconsider Section 2, sub. 1", and I think we'll do it for you.

**DELEGATE HOLLAND:** We move to—we'll move to reconsider section—

**CHAIRMAN GRAYBILL:** —2, sub. 1.

**DELEGATE HOLLAND:** —Section 1, sub.—or Section 2, sub. 1, at this time.

**CHAIRMAN GRAYBILL:** For the purpose stated.

**DELEGATE HOLLAND:** For the purpose stated.

**CHAIRMAN GRAYBILL:** All in favor of the motion to reconsider, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. Now, would you state your motion.

**DELEGATE HOLLAND:** Yes. I'll ask that line 15 of page 2—page 1 of the Style and Drafting report, the following words be added after the word "corpus": "and such other writs as may be provided by law period".

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, you'll be allowed an amendment which adds, at line 16, "and such other writs as may be provided by law". Do you care to discuss it?

**DELEGATE HOLLAND:** I see no need to discuss it, considering what I said earlier, and I'll leave it open for other discussion.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman. I join, of course, in this motion to reconsider. It developed that after we had written the article, Sandra Muckelston, the research analyst, pointed out to us a case in the Montana Supreme Court, known as *Naegele versus Kelsey*, in which the Supreme Court held that under the old Constitution there was some question, perhaps, as to whether writs—remedial writs—might be issued if it was limited to appellate jurisdiction as we had written it here. It is to correct that possibility that we ask that this amendment be made so as to conform with what the Supreme Court has already determined its jurisdiction to be.

**CHAIRMAN GRAYBILL:** Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** If not, all in favor of the amendment which would add the words "and such other writs as may be provided by law"—to the Supreme Court's power to determine writs of habeas corpus—all in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered, and it's amended.

Mr. Holland, do you wish to move that when this committee rises and reports, after having had under consideration Section 2, sub. 1, as amended, that we recommend the same be adopted?

**DELEGATE SCHILTZ:** (Inaudible)

**CHAIRMAN GRAYBILL:** Mr. Schiltz makes that motion. Very well; all in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** Very well. it's amended.

Mr. Schiltz, do you want to explain anything further about Section 2, sub. 1, in the Style and Drafting phase?

**DELEGATE SCHILTZ:** No, I had already explained that before the amendment, and there's nothing new by the amendment. Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 2, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, there are no changes at all in that subsection.

**CHAIRMAN GRAYBILL:** All right, now, the Chair may have—I see what you did, but I don't want to—is everybody agreed that Section 2, sub. 1, is adopted as amended? If anybody had any other amendments that they wanted to offer, I want to know about it. Any other comment, rather, on the style and drafting.
(No response)

**CHAIRMAN GRAYBILL:** Very well, we'll consider that adopted as amended. Now, on Section 2, sub. 2, no changes. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Sub. 3.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 2, sub 3, Style and Drafting Report Number 5, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mostly style. On line 22 we took out the words "approval or" on the assumption that if the Legislature approves, there's no reason for it to act in any way, so it will just read "subject to disapproval by the Legislature". That's all.

**CHAIRMAN GRAYBILL:** Any discussion of sub. 3?
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Sub. 3 is adopted. Sub. 4.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 2, sub. 4, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Section—or subsection 4 was moved from Section 4, sub. 3, where it covered both the Supreme Court and the District Court, and we just put this in here for the Supreme Court alone. That's all.

**CHAIRMAN GRAYBILL:** In other words, you've underlined because you've moved it to a new place?

**DELEGATE SCHILTZ:** That's right.

**CHAIRMAN GRAYBILL:** Does everyone understand that? Is there any discussion of sub. 4?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of sub. 4, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Will the clerk please read the title of Section 3.

**CLERK HANSON:** "Section 3. Supreme Court organization." Mr. Chairman.

**CHAIRMAN GRAYBILL:** That's consisting of two subsections.
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 3, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** This increased the number of justices from four to six, but as it was drafted previously, we talked about one chief justice and four justices, so we just changed that to conform to that—so there'll be one chief justice, four justices—and then we can increase the number of justices from four to six, making a court of seven.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 3, sub. 1?

**DELEGATE SCHILTZ:** Oh, and we made—now, we made one other change on the next page, page 8. We put "joined in and", for pronouncing the decision. We thought it made no sense if they just pronounced the decision; we wanted them to join in on it. That's all.

**CHAIRMAN GRAYBILL:** "A majority shall join in and pronounce the decision—decisions".

**DELEGATE SCHILTZ:** "Joined in and" is new language.

**CHAIRMAN GRAYBILL:** Yes, "joined in" is new language. Any discussion?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 3, sub. 1, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 3, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, there are only very minor style changes in this subsection.

**CHAIRMAN GRAYBILL:** All in favor of Section 3, sub. 2, say Aye.

**DELEGATES:** Aye.

**CLERK HANSON:** (Inaudible)

**CHAIRMAN GRAYBILL:** Oh, pardon me, Mr. Eskildsen; I didn't see you. Mr. Eskildsen, what have you got to say?

**DELEGATE ESKILDSEN:** Well, Mr. Chairman, members of the Convention. I just have this question to ask. It's for disqualification or disability. Somewhere, farther along the line, did we put in there for any other reason?

**DELEGATE SCHILTZ:** Are you asking me?

**DELEGATE ESKILDSEN:** Yes.

**DELEGATE SCHILTZ:** Tell me what you're talking about again.

**DELEGATE ESKILDSEN:** Well, as this section is, a district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability. Does anyplace else in the section—I can't remember anymore—does anyplace else in the section have other qualifications for a district judge to sit in the place of a Supreme Court justice?

**DELEGATE SCHILTZ:** Do you mean what constitutes disqualification or disability, or—

**DELEGATE ESKILDSEN:** Well,—

**DELEGATE SCHILTZ:** No, this is the only place there is any mention of when a district judge may sit on the Supreme Court.

**DELEGATE ESKILDSEN:** Well, what about when they take a vacation? That isn't a disqualification or it isn't a disability. I'm just wondering what we've done here, if we've—

**DELEGATE SCHILTZ:** If we did any more than we did, we'd be making substantive changes, and we didn't do it.

**CHAIRMAN GRAYBILL:** We did not cover the other situations, Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Fine. I just wanted to know if there was—if there is any other place in here where the district judge can be seated on the Supreme Court other than by disqualification or disability. You answered my question. Thank you.

**CHAIRMAN GRAYBILL:** Is there other discussion of Section 3, sub. 2?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of 3, sub. 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Read Section 4, please, Mr. Clerk.

**CLERK HANSON:** "Section 4. District

Court jurisdiction." Contains three subsections, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 4, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, we made one change here on line 17, and I referred to it before when I was talking about the Supreme Court—the "process shall extend to all parts of the state". We moved that up from Section 4, sub. 3—you'll see it deleted down there—and added it on at this section—subsection 1.

**CHAIRMAN GRAYBILL:** Any discussion?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of 4, sub. 1, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Sub. 2.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 4, sub. 2, Style and Drafting Report Number 5, (Loud sneeze) it recommend the same be adopted—without that last amendment. (Laughter) Well, this is a very slight style arrangement. It had a sub. 3 at that point, and we just struck that.

**CHAIRMAN GRAYBILL:** Discussion?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of 4, sub. 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** Sub. 3.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 4, sub. 3, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, we made only style changes until you get to lines 27 and 28, where it said: "Appeals from inferior courts must be tried anew in the District Court. The Supreme Court and District Court process shall extend to all parts of the state." I referred to that before, and they were—that last sentence was replaced. The appeals from inferior courts was deleted in its entirety before conflict with subsection 2, which says that the District Court shall hear appeals from inferior courts as trials anew. That's all the amendments.

**CHAIRMAN GRAYBILL:** Is there any discussion?

(No response)

**CHAIRMAN GRAYBILL:** All right, subsection 4 of—subsection 3 of Section 4. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Clerk, read Section 5.

**CLERK HANSON:** "Section 5. Justices of the Peace." Contains three subsections. Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 5, subsection 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, you will note that this is the Justice of the Peace part of the Judicial system, which was put back in as—or put in as Section 10. We thought it more properly belonged here, after listing the jurisdiction of the Supreme Court and the District Court, so we'd have all the courts in a row, so we renumbered that Section 5. Now, as to subsection 1, there are no changes except style changes.

**CHAIRMAN GRAYBILL:** Subsection 1 of Section 5. Is there any discussion?

(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration subsection 2 of Section 5, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, this involves only minor style changes.

**CHAIRMAN GRAYBILL:** Any discussion of subsection 2?

(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Subsection 3.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration subsection 3 of Section 5, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, all we did here was delete, on lines 13 and 14, material which was in conflict with Section 1—"or other types of courts below the District Court level as is deemed necessary"—and we covered that in Section 1.

**CHAIRMAN GRAYBILL:** Section 1 of this Section 5?

**DELEGATE SCHILTZ:** No, no, Section 1 itself. It says, after "Justice Courts", "and such other courts as may be provided by law". We didn't see there was any reason to put them both in there.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 5, sub. 3?

(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 6, clerk.

**CLERK HANSON:** "Section 6. Judicial jurisdiction—judicial districts". Contains three subsections. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, only style changes in subsection 1.

**CHAIRMAN GRAYBILL:** Mr. Schiltz, you picked up the last sentence from somewhere else?

**DELEGATE SCHILTZ:** That's right, and I was just looking for where it was. Yes, it came out of sub. 2, lines 23 and 24.

**CHAIRMAN GRAYBILL:** All right, is there any discussion of Section 6, sub. 1?

(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Sub. 2.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, style changes, and, as noted, we took out lines 23 and 24 and put them up in subsection 1.

**CHAIRMAN GRAYBILL:** Any discussion of sub. 2?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 5—6, sub. 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Sub. 3.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 6, sub. 3, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, in this case we have a possible substantive change which should be backed up by an inquiry that was made on the floor. As it read, it said, "The chief justice may, upon request, assign the district judges"—and we've provided the language "upon request of the district judge assign". Somebody asked on the floor at whose request that was, and the response was that—"the district judge's", so we felt free to do it.

**CHAIRMAN GRAYBILL:** Is there any discussion of that subsection?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 6, subsection 3, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 7, Mr. Clerk.

**CLERK HANSON:** "Section 7. Terms and pay." Contains two subsections. Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 7, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, only minor style changes.

**CHAIRMAN GRAYBILL:** Any discussion of Section 7?
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** Section 7, sub. 1 is adopted. Sub. 2.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 7, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, only minor style changes.

**CHAIRMAN GRAYBILL:** Any question on sub. 2?
Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I would like to ask Mr. Schiltz—Delegate Schiltz—do you—is it necessary to add in there "as provided by law", since we have already set up the term of offices for the various judges?

**DELEGATE SCHILTZ:** Well, Mrs. Bates, it says: "and as provided by law" and that's been—

**CHAIRMAN GRAYBILL:** "—for other judges"—"as provided by law for other judges" is what it says.

**DELEGATE BATES:** Oh.

**CHAIRMAN GRAYBILL:** It says "8 years for Supreme Court, 6 years for District Court, and as provided by law for other judges."

**DELEGATE SCHILTZ:** Right.

**DELEGATE BATES:** Well, now, in a previous—Mr. Chairman—

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** In the previous—I don't remember what section it is—we set up 4 years for JPs. Is this necessary? Are there going to be other judges in addition to these?

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** If Mrs. Bates would go back and look at Section 1—or somewhere in that neighborhood, it'll—see it's left open for intermediate courts of appeal and so on—on line 9: "and such other courts as may be provided by law". This language takes care of such other courts as may be provided by law.

**CHAIRMAN GRAYBILL:** I think there is a point, Mr. Schiltz, as to whether or not JPs should be put in there. Perhaps they shouldn't, but they do have a term provided in the Constitution. Perhaps it need not be put there.
Mr. Delaney.

**DELEGATE DELANEY:** Mr. Chairman, in Section 5, subsection 3, the—Style and Drafting deleted "or other types of courts below the District Court level as is deemed necessary". I thought that was put in there with the idea that the Legislature would—ought to form a Small Claims Court, and I thought this was the other type of court—was the idea of the other type of court we were discussing of—or judges that we were discussing.

**CHAIRMAN GRAYBILL:** And Mr. Schiltz already pointed out that we did provide, in Section 1, for such other courts as may be provided by law. So, Mr. Delaney, the reference to allowing other courts is in Section 1 on page 7; it isn't lost. But your point may be that—that may not be your point.

**DELEGATE DELANEY:** That was my point.

**CHAIRMAN GRAYBILL:** Do you find it in Section 1?

**DELEGATE DELANEY:** (Inaudible)

**CHAIRMAN GRAYBILL:** All right. Mr. Schiltz, do you have any comment on why justices of the peace's terms are not with the other terms?

**DELEGATE SCHILTZ:** No. Again, we look at the substantive material that we have and we just didn't pick up the anomaly there, if there is one. I think somebody ought to—I move that—Mr. Chairman, I move that Style and Drafting Report Number 5, Section 7, subsection 2, be amended by adding "4 years for justices of the peace" after the word—after the words "District Court judges".

**CHAIRMAN GRAYBILL:** All right, we have now added on—between lines 9 and 10, "4 years for justices of the peace", so it will read: "Terms of office shall be 8 years for Supreme Court justices, 6 years for District Court judges, 4 years for justices of the peace, and as provided by law for other judges".

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there any discussion of that amendment?

**DELEGATE SCHILTZ:** Well, if we're going to do that, then to keep the whole article consistent, we should delete, on line 2, page 9, the words "for a term of 4 years".

**CHAIRMAN GRAYBILL:** Yeah, I'm going to go back and do that. Let's just see if they want to put it in here first. Is there any objection to putting in "4 years for justices of the peace"—in with the other judges' terms?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of that, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** All right, that's adopted. Now we ought to go back and reopen Section 5, sub. 1, and take out the words "for a term of 4 years", that are underlined. Is that what you mean, Mr. Schiltz?

**DELEGATE SCHILTZ:** That's my motion, yes.

**CHAIRMAN GRAYBILL:** Any objection to opening 5, sub. 1, and taking out "for a term of 4 years", since we have now put it in another place?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** Okay, that's adopted, too. Very well, is there other—are there other amendments to Section 7, sub. 2, about the terms of office of the judges?

(No response)

**CHAIRMAN GRAYBILL:** If not, all in favor, say Aye.

**UNIDENTIFIED DELEGATE:** No.

**CHAIRMAN GRAYBILL:** Mr. Schiltz, did you want to say something?

**DELEGATE SCHILTZ:** Well, I was going to move we adopt it as amended.

**CHAIRMAN GRAYBILL:** All right, the motion is to adopt Section 7, sub. 2, as amended. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. Do you want a division?

**DELEGATES:** Yes.

**CHAIRMAN GRAYBILL:** All right. All in favor, vote Aye on the voting machines; opposed, vote No. Have all the delegates voted?

**UNIDENTIFIED DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Any delegates want to change their votes?
(No response)

**CHAIRMAN GRAYBILL:** Close the ballot. 68 having voted Aye, 14 No, Section 7, sub. 2, as amended, is adopted.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a moment, Mr. Schiltz. Right. Mrs. Acher says when we took—on Section 5, on page 8 and 9, sub. 1—when we took out the words "and for a term of 4 years", we should readopt Section 5 as amended. Very well.
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 5, subsection 1, Style and Drafting Report Number 5, we recommend the same be adopted as amended.

**CHAIRMAN GRAYBILL:** All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted as amended. That's 5, sub. 1. Now, we're back on Section 8.
Mr. Clerk.

**CLERK HANSON:** "Section 8. Selection." Contains three subsections. Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, there are rather extensive style changes, but nothing significant that might be considered substantive.

**CHAIRMAN GRAYBILL:** Any discussion of 8, sub. 1?
(No response)

**CHAIRMAN GRAYBILL:** Very well, all in favor of Section 8, sub. 1, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, this is the amended page. We had one go at it and then had another committee meeting in its connection and decided that we had to go back almost to the original language, but our first problem was occasioned by the fact that, on page 20—on page 10, line 29, we talked about the first primary election, and nowhere in the Constitution is there or will there be any provision for a direct primary. It's a statutory matter and it's very—it's conceivable that we could go to some other system at some time and then leave this section dangling, so—or of no force—or of questionable force. So, our first problem was to delete the word "primary", which we eventually did. Now, the change we made that will be—appear on your amended 11 will be the deletion of, on page 11, line 8—the deletion of the word "primary" and just leaving it read "election". And then we restored most of the language—well, I'm not down there yet. Okay, that's all, except for style changes.

**CHAIRMAN GRAYBILL:** In other words, they took out the word "primary" so that it doesn't—so that the section would not refer to a system which might be deleted out of the statutes. Is there any discussion?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 8, sub. 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.—8, sub. 3.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, sub. 3, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, now, in this case we restored the language so it reads "if an incumbent judge does not run", and we had—if you'll look at the other one—put in there "requests that his name not be placed on the ballot". We were confused as to just exactly how that would work but are confident that subsection 3, as restored, will work. "There shall be an election for the office"—we took out the word "contested"—"election for the office"—because it appeared to us that if only one man filed, there must still be an election. We can't be assured that two people will file or be nominated in some fashion. Otherwise—well, that's all the change we made.

**CHAIRMAN GRAYBILL:** Right. You said you put the word "judge" back in, but you didn't.

**DELEGATE SCHILTZ:** No, that's right.

**CHAIRMAN GRAYBILL:** "Subsection 3. If an incumbent does not run, there shall be an election for the office." Is there discussion?
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Mr. Clerk, Section 9.

**CLERK HANSON:** "Section 9. Qualifications"; containing four subsections, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, subsection 1 involves only style changes. We rearranged the language rather extensively, but we think it reads better.

**CHAIRMAN GRAYBILL:** Any discussion?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 9, sub. 1, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, sub. 2, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, we—I have to look at my notes here for a minute. Oh, you'll notice that we provided that judges shall collect expense money—or we put in the words—or we still have the words "except salary and actual travel expenses"—and deleted "as provided by law". This may be substantive, and I'm calling it to your attention. We deleted those words because we determined it to be the intent, from the debate on the floor, to entitle judges to actual travel expenses; whereas, "as provided by law", might contemplate a per diem that, in fact, is smaller than the actual travel expenses the judges are frequently put to.

**CHAIRMAN GRAYBILL:** Is there any discussion of 9, sub. 1—or sub. 2?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of 9, sub. 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 9, sub. 3, it recommend the same be adopted. Mr. Chairman, there's no change in this subsection. Well, we deleted some language, but we added it to a new Section 10.

**CHAIRMAN GRAYBILL:** Any objection to 9, sub. 3?
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, sub. 4, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, in the first paragraph, we deleted some—or we just made style changes, then we struck the language "any judicial officer who may absent himself from the state for more than 60 consecutive days shall be deemed to have forfeited his office"—and we put that down in Section 10 as a new section—as not being germane to the subject.

**CHAIRMAN GRAYBILL:** Any discussion of sub. 4?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of sub. 4, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Read Section 10.

**CLERK HANSON:** "Section 10. Forfeiture of judicial position." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 10, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, I just noted this. We moved that language down from the previous subsection and restyled it to some extent.

**CHAIRMAN GRAYBILL:** I take it that this means that he's—he forfeits if he does either of these two things which were contained in two separate paragraphs above; namely, files for another elective office or absents himself for 60 days. Is that right?

**DELEGATE SCHILTZ:** That's right.

**CHAIRMAN GRAYBILL:** Is there question about that?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 10, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. How about Section 11?

**CLERK HANSON:** "Section 11. Removal and discipline." Mr.—two subsections, Mr. Chairman—three subsections.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11, Style and Drafting—Section 11, sub. 1, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, this is only style change and very little of it. We deleted subsection 2 and put it—well, we—no—okay, we're on sub. 1—okay, that's all.

**CHAIRMAN GRAYBILL:** Any discussion on 9—Section 11, sub. 1?
(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 11, sub. 2, it recommend the same be adopted—Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, you'll see that we rephrased that language completely but kept the same sense. The redraft provides that the Commission shall investigate these various complaints and make rules implementing the section —now this may be substantive—I'll raise it—and keep its proceedings confidential. As it was written above, it sounded as though it shall investigate complaints, subpoena witnesses and documents, and make rules implementing this section and providing for confidentiality of proceedings. We took out the rules for that and interpreted that to mean keep its proceedings confidential.

**CHAIRMAN GRAYBILL:** Is there any discussion of 11, sub. 2?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of 11, sub. 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11, sub. 3, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, there are no changes.

**CHAIRMAN GRAYBILL:** Eleven, sub. 3—all in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted; and that includes (a) and (b), does it?

**DELEGATE SCHILTZ:** That includes (a) and (b).

**CHAIRMAN GRAYBILL:** Everyone understand that?

(No response)

**CHAIRMAN GRAYBILL:** Very well, Section 11, sub. 3, (a) and (b), is adopted. Section 12.

**CLERK HANSON:** "Section 12. Exemption laws." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 12, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, this section and the one following were sections assigned to the Judiciary Committee, and it has been—the—Section 12 has been rephrased slightly, and it will be placed somewhere else in the Constitution.

**CHAIRMAN GRAYBILL:** Any objection to Section 12?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 12, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Section 13. Perpetuities.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 13, Style and Drafting Report Number 5, it recommend the same be adopted. Mr. Chairman, as I indicated when discussing 12, this was assigned also to us, and this will also be placed somewhere else, and there are no changes.

**CHAIRMAN GRAYBILL:** For the record, Section 12 is adopted. Section 13—is there any discussion?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 13, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted.

Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates, having voted on the prevailing side during the course of the debate on the Judicial Article that turned down the section on campaign expenses explicitly for Supreme Court judges, and the vote being so close, I move at this time to suspend the rules for the reconsideration of a new section in the Judicial Article and—are we going to read it or—shall I read it or—

**CHAIRMAN GRAYBILL:** The clerk can read it.

Mr. Clerk.

**CLERK HANSON:** "Mr. Chairman. I move to suspend the rules for reconsideration of a new section in the Judicial Article as follows: 'Section 14. Campaign expenses. The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the Supreme Court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court nor any person or persons on his own or her behalf shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly.' Signed: Champoux." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** May I speak very briefly to it, sir?

**CHAIRMAN GRAYBILL:** Yes. The motion—Mr. Champoux's motion is to suspend the rules so that we can consider whether or not to adopt a Section 14. We did consider that, and it was rejected. He wants to suspend the rules and consider it again.
Mr. Champoux.

**DELEGATE CHAMPOUX:** This is—throughout the course of this Convention, I have in my own mind deliberated on every vote, tried to do the best I could, but there's one vote that really bothers me. There is only one vote that I'm not sure of, and it's this vote; and a last statement of Jack Schiltz's is what keyed this bother in my mind, when he said that "Just remember that if we don't provide the expenses for these judges, somebody else will, and that other group will be, in the main, large companies that come before this court, whether they do it directly or indirectly." Now, I realize that this is a new concept, this idea of providing campaign expenses. It's been approached at the national level, as you well know. And if we're writing a Constitution for the future, maybe this idea is not going to be that unusual in the very near future; so I would like to suspend the rules for reconsideration of something that's bothering me ever since I voted against it; and that's all I have to say. Thank you.

**CHAIRMAN GRAYBILL:** Very well. Is there other discussion?
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, members of the committee. I'll speak at this moment very briefly, and I'll speak very briefly if its reconsidered. There have been a couple of new developments in this field since we discussed it the last time, and if we reconsider, I would like to bring those to the attention of the committee.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, a point of information. What—is this the same as the article that was included in the majority report before, or where do we find this?

**CHAIRMAN GRAYBILL:** I'm not sure that it's identically the same. I'll read it to you carefully if we reconsider it. The point is, it's the "campaign expenses for Supreme Court justices only" clause.
Mr. Martin.

**DELEGATE MARTIN:** Mr. President, to be consistent, I resist the motion.

**CHAIRMAN GRAYBILL:** Mr. McNeil. No?

**DELEGATE McNEIL:** Mr. Chairman, I was just going to clarify that this proposed reconsideration is for Supreme Court justices only, and I believe our original consideration also included district judges.

**CHAIRMAN GRAYBILL:** I think that's right.
Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman, I feel that this is an area that is—very, very important that we do reconsider our previous action. This is a life-and-death proposition in the court of justice.

**CHAIRMAN GRAYBILL:** Now, the issue is on the motion to suspend the rules—Mr. Champoux's motion to suspend the rules. You don't need to close, do you?

**DELEGATE CHAMPOUX:** No, I just wanted to mention that. If I remember right, we had eliminated the District Court judges through an amendment—

**CHAIRMAN GRAYBILL:** I think your—

**DELEGATE CHAMPOUX:** —before we took the final vote.

**CHAIRMAN GRAYBILL:** —I think the original language was both, and then we eliminated the District Courts and we defeated that, too. All right, now, the—
Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, to me this is strictly legislative, and if you want to start, we should go back and amend the Legislative Article, the Judicial Article, and the Executive Article and all. This is straight legislative proposition. The Legislature can do it if it wants to, and suppose the Legislature only appropriates a thousand dollars to this. Where are they going to be? Now, I think you'd better stop to thinking here a little. They ain't going to have too much money.

**CHAIRMAN GRAYBILL:** Very well, the motion is on Mr. Champoux's request to suspend the rules for the purpose of considering a Section 14 on campaign expenses for Supreme Court judges.

Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I'd like to ask Delegate Champoux a question.

**CHAIRMAN GRAYBILL:** Well, now, I don't want to discuss the merits. Is this on why he should suspend the rules?

**DELEGATE BATES:** Yes.

**CHAIRMAN GRAYBILL:** All right, ask your question.

**DELEGATE BATES:** What I'd like to know, didn't—I can't see anything here that we've referred to on the partisan or nonpartisanship of judges; and if this is true, then why should we reconsider, because if they would be on the same as any other partisan candidate.

**DELEGATE CHAMPOUX:** Her question isn't clear to me. What is your question specifically?

**DELEGATE BATES:** Well, is it—why should it be necessary to suspend the rules and vote on this proposal when we have given the judges permission to file as a partisan ticket now?

**CHAIRMAN GRAYBILL:** It would seem to me that that's—that might be discussion. I don't think it's pertinent to the issue of discussing—of suspending the rules. I'd like—

Mr. Schiltz.

**DELEGATE SCHILTZ:** I think it is, because I think there was some confusion the other day about that. Mrs. Babcock raised the question, and I never got a chance to answer it, but in the course of the Judicial Article, we struck out the word "partisan" for the same reason we took out "primary election", that it's a statutory matter—we might be partisan one year and not partisan another is the fact of the matter. We are not running judges either nonpartisan or partisan so far as the Constitution is concerned.

**CHAIRMAN GRAYBILL:** All right. In other words, it isn't a constitutional matter, it's a statutory matter, Mrs. Bates. Very well, the issue is on Mr. Champoux's motion to reconsider—suspend the rules. This is not a roll call vote, but we have to know whether 51 or two-thirds vote, so please vote Aye if you—

**DELEGATE MAHONEY:** I want a roll call vote.

**CHAIRMAN GRAYBILL:** You want a roll call vote? Very well, we'll make it a roll call vote. All in favor of suspending the rules, vote Aye; all opposed, vote No—on the voting machine. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Excused |
| Blaylock | Aye |
| Blend | Absent |
| Bowman | Absent |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Absent |
| Cross | Absent |
| Dahood | Aye |
| Davis | Excused |
| Delaney | Aye |

| | |
|---|---|
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Absent |
| Murray | Aye |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Absent |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Absent |
| Speer | Absent |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Absent |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 58 delegates voting Aye, 27 voting No.

**CHAIRMAN GRAYBILL:** 58 delegates having voted Aye, 27 voting No, we'll suspend the rules to consider Section 14. There is no other section to reconsider, so I don't see any point in putting the reconsideration.

Mr. Champoux, are you or Mr. Schiltz going to put the motion? Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section—I guess it's 14, which appears on page 39 of the Judiciary report, that it recommend the same be adopted. Mr. Chairman, I would like to make clear that this applies only to Supreme Court justices, as I contemplate the motion, and whether we did or did not, I want for the—"and District Court judges" struck.

**CHAIRMAN GRAYBILL:** Very well, Mr. Schiltz has made a motion for Section 14. It's on page—roughly, the text is on page 39 of the Judicial—the initial—the original Judicial proposal, but I'll read it for you: "Section 14. Campaign expenses. The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justice of the Supreme Court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court nor any person or persons on his or her behalf shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly." If the language in the book has "district judges" in it, that's stricken here. It's for the office of justices of the Supreme Court.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, members of the committee. I'm not going to burden you at this late hour very long with this matter, but as I said, two or three things have come up that we didn't have under our consideration or in our realm of knowledge at the time. First of all, I call your attention to the International Telephone and Telegraph outfit putting forth $400,000 in the Republican campaign. This is exactly the sort of thing that this particular provision is aimed at. You don't find little people contributing money of this nature and getting favors or alleged favors in return. Now, whether that was dishonest in some way or not remains to be seen, but the fact is that the entire country thinks there was something wrong with it. Now, the second thing that came up, so far as I'm concerned, was Section 16 of the Bill of Rights Committee—or committee report. You'll recall that that was for the express purpose of turning around a decision of the Supreme Court in which the Montana Power Company was involved. Now, I want to emphasize that I do not say that the Supreme Court justices were in any way dishonest in making that Ashcraft decision. What I do say is that because they're people and their adherents and various associated people do contribute to the campaigns of the Supreme Court justices, it looks bad to the people of the State of Montana when such a thing happens. Under this amendment, there would be no possibility of that. The Legislature would appropriate the money. Now, the third thing that came up was that John Gardiner came here and talked the other night, and I took down one aspect of his speech. He was saying it was time to give government back to the people, and he said, "The most serious obstacle a citizen faces when he sets out to participate is that someone with a lot of money got there first and bought up the public address system. If we wish to diminish the power of money to corrupt the public process, we must pass laws to control campaign financing." Now, I see this as a wave of the future. Now, Charley Mahoney said he watched "60 Minutes" yesterday and one of those commentators commented on the—in the same connection, Charley—that we've got to change this elective process somehow. They're spending hundreds of millions of dollars to elect a President, and the wrong people are spending it. It isn't coming from anybody in this place except in 3- or 4- or 5-dollar dribbles, and you're not going to have any influence with it. This I see as a wave of the future and I see that—if we can enact this for five judges of the Supreme Court, that if it works—and I'm sure it will—that it will be adopted for other offices in the State of Montana. Now, so far as the cost is concerned, Mr. Garlington managed to amend the terms of the Supreme Court justices to 8 years from 6. If we had five judges who all were contested every 8 years, and we appropriated $10,000 for their campaigns—and believe me, that's enough if nobody's spending any more and nobody has to match anybody with more money—it would cost $12,500 a year, and that would cost something like 1.7 cents for every citizen of the State of Montana, and I submit to you, that's cheap. Thank you. That's all I'm going to say on the subject.

**CHAIRMAN GRAYBILL:** Just a minute, Mr. Habedank. The Chair wishes to make it clear that—I have discussed this with Mr. Murray, and we think that since there is no Section 14 in here, it's unnecessary to reconsider a defeated motion. A motion was made to suspend the rules for the purpose of offering a 14 and therefore we haven't put the motion on reconsideration. Now, if anybody objects to that, why, we'll put it, but the vote was 58 to 27, and I suppose that if they want to suspend it, they at least want to hear it, so unless I hear from anybody objecting, we're going to assume that they may put the Section 14 as it has been done.

**DELEGATE ESKILDSEN:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** If we don't reconsider it then—if we don't consider this a reconsideration and this should fail, I don't think we should have to reconsider it again, so I think maybe we should reconsider our action.

**CHAIRMAN GRAYBILL:** All right. All in favor of reconsidering the defeat of Section 14, which I believe it was styled before—all those in favor of reconsidering that decision, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** All right, now it won't have to be reconsidered if this reconsideration fails.

Mr. Habedank.

**DELEGATE HABEDANK:** Will Mr. Schiltz yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHILTZ:** Yes, I yield.

**DELEGATE HABEDANK:** Mr. Schiltz, in connection with this, there was a discussion last time it was up as to whether or not the Legislature would furnish campaign expenses for as many people as—who—as might file for the office of justice in the primary or in the general election, and I don't see anything in here.

**DELEGATE SCHILTZ:** Mr. Habedank, the language clearly says "for general election campaign expenses".

**DELEGATE HABEDANK:** Very well, thank you.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee, I'm about to send your motion back to you. I don't understand it. Do you want to make it?

**DELEGATE BUGBEE:** (No audible response)

**CHAIRMAN GRAYBILL:** Mr. Foster. I'll come back to you, Mrs. Bugbee.

**DELEGATE FOSTER:** Mr. Chairman, would Delegate Schiltz yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHILTZ:** I yield.

**DELEGATE FOSTER:** Is this made clear—that this money would be made available only in the case of a contested election?

**DELEGATE SCHILTZ:** Right—general election campaign contests or whatever.

**CHAIRMAN GRAYBILL:** It says—

**DELEGATE SCHILTZ:** It says "contested general election campaign expenses".

**DELEGATE FOSTER:** So, in the event it was not contested, this money would not be available then—

**DELEGATE SCHILTZ:** That's right.

**DELEGATE FOSTER:** He'd just be running against his record without any—

**DELEGATE SCHILTZ:** That's right.

**DELEGATE FOSTER:** Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, fellow delegates. This is going to sound exceedingly strange, but I would request that every lawyer in this Convention stand and, in as short amount of time as he'd like to spend, state his position on this. I feel the same as my fellow delegate, Mr. Champoux, but I'd really like to have some direction on this.

**CHAIRMAN GRAYBILL:** Well, any lawyers that want to can stand and speak.
Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, I'm not a lawyer, but could I ask Mr. Schiltz a couple questions, please?

**CHAIRMAN GRAYBILL:** Surely.

**DELEGATE BABCOCK:** Would this preclude private citizens from contributing to a judge's campaign?

**DELEGATE SCHILTZ:** Yes, it would.

**DELEGATE BABCOCK:** And do you anticipate that in 20 to 50 years the campaign expense will be the same as it is now?

**DELEGATE SCHILTZ:** I don't know. It's up to the Legislature, and they can make that adjustment.

**DELEGATE BABCOCK:** Well, I think some TV stations might have something to do with it.

**DELEGATE SCHILTZ:** They very well might.

**CHAIRMAN GRAYBILL:** Mr. Ask.

**DELEGATE ASK:** Mr. Chairman, I'm an attorney, and I'm going to arise and give you my thoughts on this. This is the worst kind of legislation in the Constitution, as far as I'm concerned. This is for the Legislature; and if they see fit to pass something like this, let them do it; but if it was wrong, they can change it the next year—and here we got it locked in if it doesn't work. How much they going to give them? Say they only give them $500. You can bet there's a lot of money going to be spent in that primary to get whoever you want—whoever the people want in the primary, so your primary is going to be your big election. And let me give you some examples how this might work. I was county attorney, and the first time I ran, I didn't expect to win. I was new in the community, and I ran—it's the only way you can advertise, I guess—but I happened to win, and if I wanted to go for a state political office, what better way would there be to try to get in the Supreme Court justice and get some free campaign money; and you get your name splashed all over the state; and you run long enough, you might get it—and you might not even be capable or competent to have the job—or you get your name out in the public, you've got a good name, you're going to get elected to some other job. So I think this is the worst kind of thing we could do, and if you want to do it, let's do it for all officers. Look at the money they're spending on the President, how much they spend on the Governor here. If we're going to go to pay campaign expenses, let's do it legislatively and let's go right down the line—Governor, Lieutenant Governor, whatever other office that you have running—and let's get some real control. I agree with you, there shouldn't be so much money spent on campaigns by individuals, corporations, et cetera, but let's get the whole ball of wax. Let's do it by legislative—by statute, so you have some control over it and if it's wrong, you can correct it. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman, it's exactly to what Mr. Ask said that I wanted to add a final sentence saying, "No candidate, upon winning election, may run for any other office for 10 years".

**CHAIRMAN GRAYBILL:** Well, are you talking about—he can't run for the same office again, Mr. Bugbee?

**DELEGATE BUGBEE:** Any other office.

**CHAIRMAN GRAYBILL:** I see.

**DELEGATE BUGBEE:** Yes, any other office.

**CHAIRMAN GRAYBILL:** Now, Mrs. Bugbee, if you want to make that amendment—I don't mean to stop you. I just didn't understand what you wanted to make it to. And it really wasn't in the written form that we require, because it didn't say what it amended. Now, if you want to send it up, I'll put it.

Mr. Harbaugh.

**DELEGATE HARBAUGH:** I'd like to ask Mr. Schiltz if he'd yield to a question, or maybe two questions.

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHILTZ:** I yield.

**DELEGATE HARBAUGH:** Now, the way this has been written, this section, this would apply only to contested elections. Is it your understanding that this would mean, then, only two candidates, a maximum of two candidates?

**DELEGATE SCHILTZ:** That's right. That's the statute—well, of course, it leaves it to the Legislature, but as the statutes now are, after the primary you're boiled down to two elections—two candidates.

**DELEGATE HARBAUGH:** May I ask another question? In the event, that, say, someone wanted—more than two people ran in the general election on a nonpartisan basis—and I think it wouldn't be necessary to go through a primary, would it, to run for the general election?

**DELEGATE SCHILTZ:** Well, I suppose if—I think they do have to go through the primary, but I suppose there may be something in the election laws now or there could be something in the future that would allow somebody to get X-thousand number of signatures and be able to appear on the ballot. It happens very seldom.

**DELEGATE HARBAUGH:** This would be my concern—that—I don't see anything in here that limits it just to two persons opposing one another. It seems to me that it would be very possible for three, four, maybe five candidates to get involved in this election race.

**DELEGATE SCHILTZ:** Mr. Chairman, if you're asking me a question, we're talking about the general election, where you're down to two candidates.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. Mr. Schiltz, I would just point this out—that the statutes may change from time to time and from year to year and maybe Independents will be able to run. Maybe we'll have Republicans and Democrats running for the judge—justice of the Supreme Court—and we might end up with, also, Independent candidates, and we can't say what the statutes are going to be 20 years from now. If we put it in the Constitution, there'll only be two candidates, whatever they are—they might be men and women, we don't know—whatever way you want to class them—but I can see that very possibly we could have a half a dozen candidates all drawing the same amount of money. And I can also see that the underdog in this race doesn't have a chance in the world of winning if they happen to set the amount of money too low. If they offer $500, why—or a thousand dollars, he wouldn't have a chance in the world, especially if the judge has been elected one time for 8 years and he's been in that long. He wouldn't even have to spend his. Suppose they give $10,000. He wouldn't even have to spend his. He could just pocket that and buy a new boat. But the candidate running against him would have to spend it all to try to get elected. Now, another thing that might happen is maybe you must run for the fun of it, just to get the $10,000 and don't even do any campaigning—run around the state a little bit and let it go at that. I don't think this has any place in the Constitution at all—maybe the Legislature, but not the Constitution. If you want to elect—if you want to do it for the judges, they get paid more than any other officer in the state—elected officer—other than the Governor, maybe—but if you're going to do it for them, I think you should do it for the lonely little old legislator that runs, too. I think any person that's running for office—you're not going to get a chance to answer till I'm through, Jack—sorry (Laughter) I'm making a statement, not a question—but if we're going to do it for one, we should do it for all in the Constitution or not do it at all—just forget about it. It should be legislative.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee, do you care to—do you want to amend Section 14?

**DELEGATE BUGBEE:** Yes, I'd like to ask—add the last sentence: "No candidate, upon winning election, may run for any other office for 10 years." Now, my intent here is that they shall not use public money in order to run for Congress or Governor or U.S. Senate or anything like that. Mr. Drum brought his up the other day, and I thought it was the one legitimate argument against this. If we are going to vote on it, I'd like to have this in.

**CHAIRMAN GRAYBILL:** Very well, Mrs. Bugbee has proposed an amendment: "No candidate, upon winning election, may run for any other office for 10 years." She wants to add that at the end of Section 14. Is there discussion?

(No response)

**CHAIRMAN GRAYBILL:** Very well, the question arises on Mrs. Bugbee's proposed amendment.

Do you want to speak on it, Mr. Gysler?

**DELEGATE GYSLER:** Yes, I'd like to ask Mrs. Bugbee a question. Mrs. Bugbee, it kind of appears to me that you aren't getting at what you're trying to get at, because it seems to me as though the person who would probably stand to gain the most from this money spent would be the person who lost and used it—used this means to promote himself. Now, did you intend to leave that one open?

**DELEGATE BUGBEE:** You're right.

**CHAIRMAN GRAYBILL:** Very well.

Mr. Studer.

**DELEGATE STUDER:** Mr. President, for Mrs. Bugbee's information, couldn't she just put that in—to limit the amount of money to be given to a person only once?

**CHAIRMAN GRAYBILL:** That's not a question, Mrs. Bugbee, that's just a statement, I think, unless you're asking her to yield. Very well, the issue apparently is on Mrs. Bugbee's proposed amendment to add a final sentence to Section 14 to say: "No candidate, upon winning election, may run for any other office for 10 years". All in favor of Mrs. Bugbee's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** All right, it's defeated. Is there other discussion?

Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman and fellow delegates. If there was anything that came through loud and clear during the Judiciary Committee hearings, it was the fact that a judicial candidate in campaigning for an office—what could he say—"I'll give you better justice than the other fellow"? Let's stop and think about this now. The further we can remove the "for sale" sign from the courts of justice, the better off we're going to be. Now, we're not comparing courts of justice with the other departments of government. We are talking about that last appeal, that final appeal. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I certainly share Mr. Melvin's desire that we get the courts as far removed from politics as we can, because nobody knows whose case is going to come up next or whose politics will be involved, but I have to take issue with the idea that this is the means of removing the courts from politics. On the contrary, no matter how good a record a judge has, he is assured of a free political campaign as soon as his term expires and he comes up again for election; and it seems to me that this is a perfect way to make certain that all of the judges, all of the time, will have politics firmly in the front of their conscience and their minds as they go about their work; and I think this would be an unmitigated disaster in the business of attaining a decent administration of justice in Montana. The gentlemen are entirely right. If the time comes that this becomes an abuse, the Legislature is in a complete position to take care of it, and it is the one that has the purse strings, and should it feel that in a certain campaign there is a judge that they don't particularly like, it would be very easy to rig the amount provided for the campaign on that election to effect the purposes of the Legislature and make sure that it would be a kind of a political result that the legislative people in command would like to achieve. Since this is utterly unprecedented in constitutions and we have had many lessons in not putting something in and making it a burden forever, it seems to me that the proper judgment here is to leave this to such time as it may genuinely prove in our own state to be an evil that needs correction, and then our people's representatives, the Legislature, can do so.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, regarding the primary, the Legislature could limit the number—amount of funds that could be spent in the primary, so assuming you had 10 lawyers filing for associate justice, which is unlikely but a possibility—it's never happened in the past, to my knowledge—so that takes care of the primary. And, unfortunately, I wasn't here for the debate—I was ill—it occurred, apparently, right after I strongly urged that we take care of this problem; and we wouldn't really have the problem if we had used the method of—that I proposed, the federal method of appointing the judges. That is the only fair way—the only way that you're going to get a truly independent Judiciary, but we have already decided against that. My proposal, as I recall, had 13 votes. It was the original—part of the original Montana plan. Now that we have opted for elections, which I detest, in the Judiciary—and I think it's ridiculous and absurd to elect judges and have popularity contests for judges. Judges are not supposed to be popular; they're supposed to be just. But now that we have made up our mind to have these elections every so often—every 8 years—for the Supreme Court, then I do not feel that the judge should be tempted. One justice told me that the first time he ran, it took him—for the 6-year term—it was a full 6-year term, as I recall—it took him 3 years to pay off his campaign debts. Then what's he supposed to do? Spend the last 3 years to pay for his—to get ready for the next campaign? How in Heaven's name can you expect to have an independent Judiciary under these circumstances? It's just lucky, as I said before, that we have never had a terrible scandal, as they had in the State of Oklahoma, where two associate justices and a Supreme Court justice, as I recall, were involved in bribe-taking from an oil company. Therefore, although I do not like this method of electing judges, I feel the only safe way of putting them beyond reproach and doubt—and our people must never, never have any doubt in their mind that they are going to get justice on the other side of this Capitol building. Therefore, I support Mr. Schiltz's amendment and I urge you most strongly to vote for it.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President, fellow delegates. I heard many years ago that, in England, when a person is running for most any office, that there isn't campaigns like we have here; that they are provided with the same publicity—it's possibly a legal-sized paper, qualifying that person with his qualifications and the reasons why people should vote for that particular person. Now, if the Legislature saw fit, why couldn't the state printing presses put out the qualifications on these men running for the judicial—put out the same amount for each man running, whether it be in the primary and then in the general election—and let the Legislature decide just how much of this material would go out in a very fair and favorable manner. This way they would have complete control of it, and the costs shouldn't have to be prohibitive, and, of course, the judge himself would really not be out on the campaign trail.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, what I'm wondering here—say there were several young, upcoming lawyers decided they were going to run for judge, and if they made it through the primary, they would receive perhaps $10,000 for the general election. If they were defeated in the primary, they went out and got sufficient number of signatures to run as an Independent—we could be paying several young attorneys to run in the general election and all they were really wanting was to get their name out before the public for some future advances in their own business. And I certainly object to this proposal.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** I can see—sense some problems with this proposal that we cannot yet foresee. But on the other hand, I already know of a lot of problems that we have right now and I can't even guess that problems that will be any bigger than the ones we have now with the present situation, so I think I'll vote for this.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I sure hesitate to see this Convention write into the Montana Constitution something that the national justices—Supreme Court justices and Congress of the United States are wrestling with at this time, trying to determine what procedure to follow along these lines; and if we should lock this into our Constitution, however noble we think it is, and it doesn't work, then what do we do? I think this is purely a legislative matter and that at such a time that the Supreme Court of the United States decides that this is an issue that should be inaugurated throughout the country, then perhaps Montana should go ahead and adopt it; but at this time, I think we would surely be premature. We don't know the mathematics of how it would work, and we don't know what the Legislature would determine. They could be influenced politically one way or the other, depending on the politics of that body, and it certainly would be an experiment at this time. And I'm firmly against this proposal.

**CHAIRMAN GRAYBILL:** Mr. Rollins.

**DELEGATE ROLLINS:** Mr. President, I favor Mr. Schiltz's proposal because it might make our judges like Caesar's wife—above suspicion.

**CHAIRMAN GRAYBILL:** Mr. Aasheim, will you take the Chair?

**DELEGATE AASHEIM:** May I say a few words first?

**CHAIRMAN GRAYBILL:** Sure.

**DELEGATE AASHEIM:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Members of the assembly, I think Mr. Schiltz has a very worthwhile idea here, but I feel that it doesn't belong in the Constitution, and I wonder, Mr. Chairman, if we could not direct a resolution or direct this to the Legislature—a resolution that the Convention recommend that they give serious consideration to this proposition, rather than making it into the Constitution.

(Delegate Aasheim assumed Chairmanship of Committee of the Whole)

**CHAIRMAN AASHEIM:** Mr. Graybill.

**DELEGATE GRAYBILL:** Mr. Chairman. Mr. Furlong asked a moment ago for lawyers to stand and discuss this, and since I discussed it the other day and since I feel strongly on it, I will do what he asks. I'd like to—first of all, I would like to tell you that I'm in favor of it and will vote for it, and now I'd like to discuss some of the points that have been raised. Concerning the number of candidates, the number of candidates almost always has to be only two. It's the general election and the election laws provide that everyone else is eliminated in the primary; and I think it may be possible, through a great effort, to get your name on the ballot through a great—as an Independent. This has never been a very successful method, but conceivably if the money were there and were very much, it might be used more, but it still would be a difficult thing to do and wouldn't raise materially the cost, in my view. One of the—one of you mentioned that if it's such a good—I think Mr. Ask said—if it's such a good idea, why don't we do it for other offices. The truth of the matter is, we should do it for other offices. The truth of the matter is, probably within the lifetimes of most of us in this room, we will do it for other offices. The question is whether this Convention is going to take the lead in breaking the ice and starting with the Judicial Supreme Court offices in this state. This Convention invited John Gardiner to speak. I didn't know what Mr. Gardiner was going to speak on, except his general reputation for being a person who speaks about better government throughout the country. Only about half of you came. I know why;

you were all tired. I don't blame you. I wish you would have all come. You would have felt a little differently about this article at the moment. This man didn't know anything about Montana, but he talked about the national situation, and he pointed out how absolutely impossible it is getting to run campaigns decently and honestly and honorably on the kind of money that must be spent for media and for coverage and for moving about. Now, this is true in the State of Montana and it's true for the office of Supreme Court. This is a big state. The judges for the Supreme Court, under the present circumstances, are forced to compete with several other officers. They have to buy television time, and generally a lot of it—at least they do buy a lot of it. It's a very expensive proposition. All of the arguments that he made for any office being supported financially by the public apply to the Supreme Court justice, and as Mr. Melvin has twice told you this afternoon, there are several additional reasons why it applies especially to the judicial offices—these people who are supposed to decide fairly and evenly between all of us after they get elected. It's one thing to support a senator or a congressman and have him help you out with a bureaucracy; it's another thing to support a judge and have him help you out with a decision. The next thing that was mentioned was maybe these fellows would pocket the money if they were a sure bet. Well, you know, the section provides that this shall all be done by Legislative Assembly appropriation and obviously under the Legislature's eye, and the Legislature is not going to be foolish enough to hand these men the money on June 7th and let them have it. The Legislature is going to pay their bills, and their bills are going to have to be audited, and it's not going to pay anybody any money unless they've spent it on campaign expenditures. Now, I must, at this time, rise in opposition—for one of the rare times in this Convention—with my good brother off the bench, Mr. Garlington. Mr. Garlington stood and said, "Whose case comes up next?" If we knew whose case comes up next—well, I can tell you whose case is coming up next. It isn't the dollar giver; it's the thousand dollar giver whose case is coming up next. And I can tell you quite honestly and straightforwardly that there are law firms in this state who give a thousand dollars to the campaign expenses of one judge for the Supreme Court, and you only have to walk a half a block and check it up yourself if you don't believe me. Now, I don't know if there's any campaign expenditures down there now, because they destroy them after 6 months, but there will be the next time the Supreme Court is up, and there are those who photostated them before and could show them to you. There are law firms that give that much. There are others who give great sums of money, sometimes split among numerous relatives, to Supreme Court judges when they run for office. That's what has to happen now for a Supreme Court judge to get together the kind of money that it takes to put on the kind of campaign that it takes to get reelected—or even to get defeated—and if you want to continue that, as I said a week and a half ago, today's your chance to continue that by voting against this. But if you want to change it, today's your chance to help Montana take a really important new step in how to run campaigns. Then, Mr. Garlington said, "If the time is here that it's an abuse, the Legislature can do something about it." My friends, the time is here when it's in abuse. It's in abuse today. It was in abuse in the last election, and it was in abuse in the election before the last election. And asking the Legislature to do something about it, if it's such a good idea, is only putting off the dirty work of taking the step to somebody else. We're a Constitutional Convention. We only meet once. We can do that job if we have to. It would be very difficult for the Legislature to do it. Mr. Garlington also discussed the subject—well, I don't remember that point. The point—the last point I want to make is that someone said that we might lock it in—I think Mr. Wilson said we might lock it in and it might not work. First of all, if we lock it in, it will limit the expenditures for Supreme Court judges except as set by the Legislature. If, in fact, some other supraagency comes in that will pay all of these bills, we've caused no problem, because the Legislature can then reduce the amount to zero that would be paid for the campaigns of these judges, but if no one else takes over that burden of supplying campaign money on a national or state basis—statewide basis—then we will have at least cured the problem for the Supreme Court. Of course it's not perfect, and of course it's only a start. We have a chance to start this afternoon.

**CHAIRMAN AASHEIM:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman, would you read that new section again? I know we had it when the Judiciary was under consideration, but I don't think any of us have it on our desk now.

**CLERK HANSON:** "Section 14. Campaign expenses. The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the office of justices of the Supreme Court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court nor any person or persons on his or her behalf shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly."

**CHAIRMAN AASHEIM:** Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Johnson.

**DELEGATE JOHNSON:** Ladies and gentlemen, I'm in favor of the Legislature setting the amount that is necessary for a campaign. I don't know just what it would be—say, for instance, a thousand dollars—I'd like to take that amount. Could you get your name in the paper, a writeup about you so that you would be—so people could get acquainted with you and what your qualifications are and so on, all over the State of Montana? Then, if each justice would spend a thousand dollars—be allowed by legislative law to spend $1,000 on his campaign, that wouldn't hurt him very much. He wouldn't have to go into this terribly expensive TV programs and travel all around the place, and I think that would equalize it. Then the Legislature itself would not have to raise this money. I really do not believe in the Legislature raising money—taxpayers' money—to pay for campaigns of political officials. Certainly this, in my opinion, is going to set a dangerous precedent if we do it in this manner; but I am in favor of that part where the Legislature regulates the amount that might be spent. I think that's a real good idea and that should extend to all political offices seeking—or candidates seeking office. I think in the future we spend too much money and too much time chasing around. Look at the months and the money and the clubs you have to raise. Only people who benefit from this are advertising agencies and radio and et cetera, et cetera. I think it's ridiculous to spend, oh, great many more times the amount of money than you make as a legislator or a public-officeholder. Your salary wouldn't pay for one week's expenditure for a campaign. I'm against it as it is, but I would be in favor of the Legislature controlling—or setting the amount that's allowable to be spent. Thank you.

**CHAIRMAN AASHEIM:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. Chairman, I just wanted to ask a question of the assembly. Is this why this body, when we were discussing the Revenue and Finance Article—is this why we removed the 2-mill property limit, in order to finance all the political aspirations of our lawyers wanting to run for Supreme Court justice or other higher offices?

**CHAIRMAN AASHEIM:** Mr. Champoux.

**DELEGATE CHAMPOUX:** You know, you heard a lot from me in the last few days and I hate to—you know, you keep hearing my voice, but—and I was against this, and I thought it was a lawyer-relief bill. Very frankly, you lawyers, I figured, well, here we go again—we're going to really—you know, all those big salaries, and we're really going to take care of them with this thing. But, you know, I've been impressed. I think there's greatness in this combined body; I really do. Look at the way you worked us over in that Education—and we had a perfect Education bill. (Laughter) But everything we've done here has been better. I am very much impressed with all of you. We have contributed something already. We are the first Constitution in any state in the Union that has ever put in a special clause for the American Indian. First one. Papers haven't caught that one yet. Here's a chance for another great move if we look ahead and think ahead, and I'm going to support this proposal. Thank you.

**CHAIRMAN AASHEIM:** Oscar Anderson.

**DELEGATE OSCAR ANDERSON:** Just for a point of clarification, I'll ask this from someone of the experts on legislation. Would the Legislature be forced to appropriate this money? I think I can direct this at Mr. Mahoney—he seems to be the legislative expert. Would you yield, Mr. Mahoney?

**CHAIRMAN AASHEIM:** Mr. Mahoney, will you yield?

**DELEGATE MAHONEY:** What is the question, Mr. President?

**DELEGATE OSCAR ANDERSON:** Would the Legislature be forced to—by this constitutional mandate—be forced to appropriate the money?

**DELEGATE MAHONEY:** Yes, $1.

**DELEGATE OSCAR ANDERSON:** A further question—would you yield for another question, Mr. Mahoney?

**CHAIRMAN AASHEIM:** Will you yield for a question?

**DELEGATE MAHONEY:** I'll try.

**DELEGATE OSCAR ANDERSON:** If they didn't appropriate, say, for instance, a dollar, then no one could spend any money at all for these judges? Would that be right? I want some clarification of this point.

**DELEGATE MAHONEY:** I'd agree with that. That's the way—my interpretation of it.

**CHAIRMAN AASHEIM:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President, I've listened here with some interest for some time on this, and I certainly agree with Mr. Schiltz that the spirit of this is very commendable. Certainly, in all of our campaigns, if—insofar as we could, it would be very desirable to take all the popularity contest aspect out of them, but I submit for your consideration that the proposal as submitted would not accomplish what it's intended to accomplish. The incumbent always has the edge—just the fact that he can put out an ad saying "reelect John Jones". And the Supreme Court offices being what they are, they don't get much publicity, so nobody has heard anything bad about the man; they'll tend to reelect him. This means that the person running against him has got to come up with a better campaign. That's the first point you want to keep in mind. Secondly, all the incumbent has to do is to start campaigning ahead of time. He's in office, we must remember. He has all kinds of opportunities to go around and make public speeches. These would not be a part of campaign expenditures, would not be regarded as even a campaign. I would foresee a situation where the other justices on the bench, having been invited to go to Missoula or Great Falls or Havre, Billings, to give a talk, would turn to the incumbent-to-be or the candidate-to-be and say, "Here, Joe, you go down and take this. You're going to be running for office pretty quick, and you could use a little publicity." The net result would be that our incumbent, by this system, would be given a tremendous edge. I would predict that, if it went into effect, the incumbent would win every time, because his opponent would only have the same amount of money that he had. Now, let's consider something else. We're going to have a hard-pressed Legislature on a budget matter every time; they're always hard-pressed. We have a law on the books now that says a candidate for public office is expended—is limited in his expenditures to 5 percent of his income—5 percent. This was passed some time ago—and as was pointed out a little while ago, it was got around by the club concept—but nevertheless it's on the books, and so the Legislative Budget Committee is going to look at that and say, "Well, we have a law on the books that says 5 percent is the limit, so that's what we'll give these judge candidates. His pay is $20,000 a year, so we'll give each of these men $1,000." I don't think a thousand dollars is hardly even enough to cover the state letting the public know who's running. I don't think you could run ads in all the newspapers in the state just by way of announcement—so that the candidate trying to oust the incumbent would be a—have a terrific disadvantage. And I think that, for these reasons, we should leave it up to the Legislature; and as I say, the aim is very desirable, but I think it's got to be given more thought.

**CHAIRMAN AASHEIM:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** I've been listening here to all of these talks. I can certainly see a lot of desirable things, but I would like to speak as a member of the minority group. Now, I don't mean politically, I mean the taxpayer. Now, I say minority—we're in the minority today—on June 6th, the taxpayer of this state is not going to be in the minority. Now we've heard time and time and again here the remark, "the old Constitution". I think Delegate Champoux used that a hundred times, probably. I would like to submit to you that this is the old Constitution; it's the present Constitution, and it very well could be the Constitution of the future. I think it's time that we start realizing a little bit what we put onto the Legislature. Everything that we do directs the Legislature to spend some more money. Now, just where in the world are we going to get it? We haven't been able to fund our institutions properly for many years. We haven't been able to fund our school system. Now, is there some great new tax base that's been discovered that I don't know about? I sure hope it isn't removing that 2-mill levy off my property. I hope that isn't the tax base that's been discovered, but I'm afraid it may be. Now, this thing kind of builds up on you day after day. A little dose at a time doesn't seem to mean much as it comes, but I think it's just like DDT. I think maybe you get enough DDT in the ecology and probably you're going to wreck the whole thing, and I'm wondering if this isn't just about what we're doing here with these little doses, one at a time, and I'm certainly going to have to give this whole document a real good looking over when we get through, because I do think that the taxpayer is going to be in the majority when it comes June 6th. And that's about all I have to say on this subject and I thank you, Mr. Chairman and fellow delegates.

**CHAIRMAN AASHEIM:** Mr. Drum.

**DELEGATE DRUM:** Thank you, Mr. Chairman, I'd rather be in front of Mr. Dahood than behind him. (Laughter) The—no offense meant. The thought crosses my mind that if each of us here, by statute, were allowed to spend a hundred and twenty dollars in the general and a hundred and eighty dollars in the primary—and I wonder how many stayed within that limit. If you did happen to exceed that limit—I, for one—if you did happen to exceed that limit, the chances were you set up a club mechanism, so the comments I make I would like to address to Mr. Graybill's and Mr. Schiltz's intent, which is a better, more just, more representative Supreme Court. However, unless more restrictions are put on the spending of club money, it would seem to me that, really, we aren't going to accomplish anything by funding the candidates' expenditures, because certainly the club expenditures will continue unless it's prohibited by statute. Excuse me, Mr. Schiltz, would you like to yield to a question—or—The legal profession seems—the times that I have taken an interest in any of these—and I've been a contributor to two of the candidates that ran in the last Supreme Court race; one of them was picked up in a airplane for supposedly carrying a bomb or something and the other's been mad at me ever since we've been here because I didn't support this thing the first go-around (Laughter) but the exposure I've had to the legal fraternity is that they sort of pick, generally—without making a big issue out of it—the fellow that they think is going to make the best judge; and if their law firms support that person financially, it may be a good thing, because you may wind up with the gentleman as a Supreme Court justice who the legal fraternity generally thinks will be the best judge; and we may be excluding quality if we put them both on the same basis. If one fellow has the quality to attract more support, why not allow him to get the support, rather than to—and I'm assuming that most of this—most of the contributions will come from the legal profession, or a good part of them will come from there. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I'm sure that I'm not going to sway any minds. To me the reasons that are opposed to the proposition now before this delegation reveal the same type of frustration that our Bill of Rights Committee has been having with the Montana Press Association with respect to the right to know. No matter how much reason, how much logic we give to the issue, I'm reminded of the placard that was in vogue in offices throughout the country several years back—"My opinion is made up, don't confuse me with the facts". The taxpayer, above all, should have paramount interest in this proposal. He is the one that is affected by the quality of justice, more than anyone else. What cases are presented to the highest tribunal of this state? Cases that involve every facet of Montana society—complicated tax cases, complicated assessment cases, zoning cases—every type of case that involves the tax structure of the State of Montana—and I wonder how many times in the last decade those cases have been decided adverse to the ordinary taxpayer in the State of Montana, in favor of the vested interest, and thus have taken away from the ordinary taxpayer a measure of revenue that is required that taxes be raised with respect to the ordinary taxpayer to make up for that particular deficit. How much is too high a price to pay for real justice? If more than two, by some type of political circumstance, should be in the general election, does that really make that much difference? If the Legislature has to make another appropriation to cover that situation, are we going to measure the quality of justice by how much we have to pay to secure it? What separates civilization from the jungle but law and order? And the quality of law and order has to be tested at the top, and the Judiciary is different than the Executive and is different than the Legislative, because it's the final word; it's the court of last resort. It's the last place to which the citizen can carry his complaint, and there the result had better be correct and it had better be right. Some reasons have been given that are plausible. One, the incumbent would have an advantage; two, we might not appropriate enough to help the challenger; three, the minute you put in an advertisement or on TV "reelect", that is going to give that particular individual an advantage. And all those things may well be true, but in final analysis and logically, when that individual is placed back in his position—reelected, if you will—at least then he owes his office to the people of this state and not to some vested interest. There are problems, I should think, in making this particular proposition work in practical effect, but it's a start in the right direction because it's a start towards the type of justice that the people of this state want, and I'm for it.

**CHAIRMAN AASHEIM:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, I just listened to Mr. Dahood, and I'm sure that he didn't mean that the way I am taking it. I trust the courts of the State of Montana. I think they've been honest. I think they've been fair. I don't think that they're to be challenged here on this floor as acting that they're dishonest. Now, I might be altogether wrong on this, but I feel that here we've got a branch of government, and it would seem to me that they have just been indicted. I just wonder, Mr. Dahood, on this point, that those men—now, I have criticized their opinions, and when I went down, I have decided that they were finally decided on a straight, legal law issue in this state, and I think that the Supreme Court here has done that job as according to law. Now, this is my opinion.

**CHAIRMAN AASHEIM:** Does anyone else wish to speak on the proposition?
Mr. Romney.

**DELEGATE ROMNEY:** I will be very brief. (Laughter) The gentleman from Anaconda spoke about—and I believe someone else before him—spoke about the ability of getting the ad in the paper, "reelect". I know something about political campaigns. I've been in them up to my neck all my life, and I know it costs money; but there is one thing that the challenger could do, and particularly Delegate Mahoney in the judicial arena, and that would be to put a little 1-inch reverse ad in, "why reelect?"

**CHAIRMAN AASHEIM:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I would like to have Delegate Graybill yield to a question.

**CHAIRMAN AASHEIM:** Will you yield, Mr. Graybill?

**DELEGATE GRAYBILL:** I will yield.

**DELEGATE BATES:** If the Legislature in times past—when they set a limit and this hasn't worked, then can you see how they can control clubs and individuals holding to a limit now?

**DELEGATE GRAYBILL:** Well, in the past and under the present circumstances, the clubs have a perfectly legal right to support the candidate with any amount of money they want to and any number of individuals can support them with any amount of money they want to. The sense of this proposal here is that they cannot spend any money, that the money must be appropriated by the Legislature. It would simply be a clear-cut violation of the law, so I think that we ought to at least try making the law tight. Right now there's absolutely no reason why somebody can't spend $50,000 on a judge if they want to.

**DELEGATE BATES:** Would Mr. Graybill yield to another question?

**CHAIRMAN AASHEIM:** Will you yield to another question, Mr. Graybill.

**DELEGATE GRAYBILL:** (Inaudible)

**DELEGATE BATES:** You say they—now they can, but can the Legislature control individual and club spending if they wanted to do this, even though there were limits, even though we did enact this appropriation?

**DELEGATE GRAYBILL:** The Legislature could pass a law that clubs can't spend money, but they never have. The Legislature lets clubs and individuals spend any amount. It limits the amount we spend individually as candidates. Now, about five hands went up here, and the rest of us know we spent more than that on our campaigns, and we got it from our friends. Now, that's exactly what the judges do. The point is the judges are then deciding the cases involving many of the friends as their lawyers or their clients—or the clients.

**DELEGATE BATES:** Well, I can't see how this would control it. Thank you.

**CHAIRMAN AASHEIM:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, would Mr. Graybill yield to a question?

**CHAIRMAN AASHEIM:** Will you yield, Mr. Graybill?

**DELEGATE GRAYBILL:** I'll try.

**DELEGATE HABEDANK:** Mr. Graybill, I'm very much in favor of some way to elect judges without contributions. Let's assume that you were the candidate and some person or persons—am I on?

**DELEGATE GRAYBILL:** Yes.

**DELEGATE HABEDANK:** —some person or persons on your behalf did spend money. Now, they have violated the law. Are you to—as you look at this proposal, would you be forfeiting the position if this happened?

**DELEGATE GRAYBILL:** I don't believe you would be, but I believe that the people that violated the law would be subject to going to the—would be subject to criminal prosecution, and I think after the first or second criminal prosecution, you'd have quite a lot less of it.

**DELEGATE HABEDANK:** But I think we should make this appear very clearly in the record—that the proponents of this and the people who are in favor of this feel that if any person or persons in the State of Montana do spend money on behalf of a candidate, the candidate elected shall not forfeit his office. The prosecution shall be against the person; that would be the intent of this—

**DELEGATE GRAYBILL:** Certainly, I think that's right, Mr. Habedank. Now, if it were proved in a court of law that the candidate himself induced the spending of the money, he, of course, would be a party to the criminal act; and I suppose then he might lose his office; but if he didn't intend it, I'm sure he wouldn't.

**CHAIRMAN AASHEIM:** For what purpose do you arise, Mr. Habedank?

**DELEGATE HABEDANK:** I wish to point out that Mr. Graybill said—

**CHAIRMAN AASHEIM:** Are you on—do you want to discuss the proposition?

**DELEGATE HABEDANK:** Yes. Yes.

**CHAIRMAN AASHEIM:** Oh, all right.

**DELEGATE HABEDANK:** Mr. Graybill pointed out that under the law, if the person running for office could be proved to have—should it prove there was collusion between the person running for office and the person spending the money, that then he could lose his office, and I agree with this. But this, to me, is the crux of the matter, and with that in the record, as much as I feel this is legislation, I am going to support the proposal.

**CHAIRMAN AASHEIM:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, Delegate Mahoney made a point that I think is a fair point, and I think it deserves response. I don't think anyone who speaks in favor of this particular new section indicts the Supreme Court justices. I think they're all gentlemen of integrity. However, I think in a close situation, subconsciously perhaps, as a matter of elementary psychology, you're going to pay greater heed to the arguments and to the presentations and the authority submitted by those who have been responsible for the position that you occupy at that particular point; and I think what we are saying is that we would like to do away with that particular situation and circumstance that does exist; and I venture to say that the Supreme Court justices themselves would like to do away with the present system. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Anyone else want to speak?

Are you going to close, Mr. Schiltz?

**DELEGATE SCHILTZ:** Yes, if I may.

**CHAIRMAN AASHEIM:** Mr. Burkhardt first.

**DELEGATE BURKHARDT:** Could I ask a question of Mr. Schiltz, as long as he's on his feet?

**CHAIRMAN AASHEIM:** Mr. Schiltz, will you yield to a question?

**DELEGATE SCHILTZ:** Yes, indeed.

**DELEGATE BURKHARDT:** Jack, do you know what was spent in your campaign, as far as your opponent and yourself—not in dollars, but comparatively? Do you know whether you spent similar amounts? Is that public information, or what?

**DELEGATE SCHILTZ:** I can only tell you right now what I spent, and it was in the neighborhood of $11,000, and I declared every dime I got. I'm not sure I added up what my opponent spent. I guess I did, but I don't recall. I know where his money came from, which is very significant, I think.

**DELEGATE BURKHARDT:** Another thought that runs through my mind is—does—

**CHAIRMAN AASHEIM:** Are you asking another question?

**DELEGATE BURKHARDT:** Well, let me ask it just—let me just raise my own questions as I go, and maybe someone will speak to them—but is the system only corruptible in terms of those who give to campaigns, or don't you get paid off along the way? It seems to me that there are lots of opportunities as time goes on, not simply in terms of your campaign expenses, when friends help each other, and so you've got that to think about. Buying justice is something that you wonder whether the people—we the people have any better chance of buying justice than friends of friends, and these are questions I think we have to sort out and struggle with. Maybe somebody will try to speak to it.

**CHAIRMAN AASHEIM:** All right, Mr. Schiltz.

**DELEGATE SCHILTZ:** May I close?

**CHAIRMAN AASHEIM:** You may close.

**DELEGATE SCHILTZ:** I want to say that, along with Mr. Dahood, that—and I said it earlier—that nobody is indicting the Supreme Court. We're concerned about how it looks to have the Supreme Court get the money from where it gets it. As Mr. Dahood said, certainly the Supreme Court would probably be the first people who would endorse this sort of an idea. It would save them, as incumbents, from this taint that inevitably falls on them, and I want to say that and make it perfectly clear, as Mr. Nixon says. Secondly, I want to say that this has nothing to do with lawyers. We're talking about our clients, and we're talking about the ordinary person who goes into the court of justice, and he's entitled to think that there's no possible way that that thing is anything but a proper court of justice, and with that, I close.

**DELEGATE KAMHOOT:** Roll call, please.

**CHAIRMAN AASHEIM:** A roll call vote has been asked for. Do you understand the Section 15 now, as it is proposed? Any request to have it read?

(No response)

**CHAIRMAN AASHEIM:** If not, a roll call vote has been requested. As many as are in favor of the—of Section 15 as amended, vote Aye; those who are opposed, vote—will vote No. Has everyone voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone want to change his vote?

Mr. Martin, for what purpose do you arise?

**DELEGATE MARTIN:** I want to explain my vote. It's because I oppose reconsideration during style and drafting.

**CHAIRMAN AASHEIM:** The clerk will tally the vote.

| | |
|---|---|
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Excused |
| Blaylock | Aye |
| Blend | Absent |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Absent |
| Dahood | Aye |
| Davis | Excused |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |

| | |
|---|---|
| Graybill | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Absent |
| Murray | Aye |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Absent |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Absent |
| Speer | Absent |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Aasheim, Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 55 delegates voting Aye, 32 voting No.

**CHAIRMAN AASHEIM:** 55 having voted Aye, 32 voting No, the section is adopted.

(Mr. Graybill assumes Chairmanship of Committee of the Whole)

**CHAIRMAN GRAYBILL:** May the Chair be indulged the privilege of pointing out that I voted from my seat and not as Mr. President. I got in trouble last time when I asked somebody that had a different opinion than me to do that. Very well, Mr. Murray, do you think we've moved that for final consideration? I guess we—is that right? I guess we have.

Did you make a—I think you made the motion that, when we rise and report, didn't you, Mr. Schiltz?

**DELEGATE SCHILTZ:** Well, yes, I did, and I would ask that it be referred to Style and Drafting for incorporation into the article and report back as we did before.

**CHAIRMAN GRAYBILL:** Very well, then, Section 14 is adopted. Is there other—are there other matters to come before us on the Judicial Style and Drafting Article?

(No response)

**CHAIRMAN GRAYBILL:** If not, Mr. Murray, do you want to make a motion?

**DELEGATE MURRAY:** Mr. Chairman, I move that we pass—by way of rearranging the calendar, I move that we pass consideration of all other matters of business on General Orders until the next sitting of the committee.

**CHAIRMAN GRAYBILL:** The motion is to pass all other matters on General Orders until the next sitting of the committee. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

Mr. Murray, do you want to move that this committee rise and report finally on the Judiciary Article?

**DELEGATE MURRAY:** Yeah, Mr. Chairman, I move the Committee of the Whole rise and report finally on the Judiciary Article.

**CHAIRMAN GRAYBILL:** Very well, the motion is to rise and report finally on Style and Drafting's Judicial Number 5. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Proceedings moved from Committee of the Whole to Convention, President Graybill presiding)

**PRESIDENT GRAYBILL:** Mr. Clerk, will you read the title and signature of the motion.

**CLERK HANSON:** "March 13th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration report Number 5 of the Committee on Style and Drafting and Transition on Judiciary, recommend as follows: that the committee rise and report finally on Style and Drafting Report Number—on Judiciary, Number 5. Signed: Graybill, Chairman."

**PRESIDENT GRAYBILL:** Does anyone want the report read in full?

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** All in favor of the motion, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** Mr. Murray, we did put the motion, didn't we?

**DELEGATE MURRAY:** I retroactively move it.

**PRESIDENT GRAYBILL:** Well, it's written into the committee report, Mr. Murray, so it's there. Very well, we have now adopted Style and Drafting's report on Judiciary, Number 5, and I will move it—I will assign it to Order of Business Number 5.
Mr. Murray.

**DELEGATE MURRAY:** Are we on Order of Business Number 11?

**PRESIDENT GRAYBILL:** We are on Order of Business Number 10, and now we can go on to Order of Business Number 11.

**DELEGATE MURRAY:** The Bill of Rights hearing, in the morning, 8 o'clock, in the Governor's reception room, and Rules, at noon recess tomorrow.

**PRESIDENT GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I thought we moved this article to Style and Drafting so they could incorporate it.

**PRESIDENT GRAYBILL:** I think that's right. I think we—I probably did the wrong thing.
Mr. Schiltz, do you want this whole thing back to Style and Drafting?

**DELEGATE SCHILTZ:** I think it should go back to Style and Drafting. I notice the language is "Legislative Assembly", and we'll want to change that to "Legislature", and that sort of thing.

**PRESIDENT GRAYBILL:** All right, do you need the whole article? I guess you do.

**DELEGATE SCHILTZ:** I think we do, yes.

**PRESIDENT GRAYBILL:** All right, we passed—I think what we did was we passed the Committee of the Whole report, having passed it in the Convention, the President assigned it to Style—to Order of Business Number 5, and without objection, I'll withdraw it from Order of Business Number 5 and assign it to Style and Drafting. Now, I think we've got it straightened out. Anyone object to that?
(No response)

**PRESIDENT GRAYBILL:** Very well, it's assigned to Style and Drafting. One other announcement on Order of Business Number 11, tomorrow night at 8:00 p.m., Miss Jeannette Rankin will be here and address the delegates at a little Distinguished Speakers meeting. That means we will not meet tomorrow night. It's our present intention to start with Natural Resources and Revenue Style and Drafting in the morning and take up Public Health as soon as we get to it tomorrow. Are there other announcements?
(No response)

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. President. I move the Convention adjourn until the hour of 9:00 a.m., March 14, 1972.

**PRESIDENT GRAYBILL:** The motion is to adjourn until 9:00 a.m. tomorrow morning. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So ordered.

(Convention adjourned at 7:00 p.m.)

**March 14, 1972**
**9:00 a.m.**

## Forty-Fifth Day

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** The Convention will come to order. If you'll all stand, Delegate Carman Skari will lead us in an invocation this morning.

**DELEGATE SKARI:** As we begin a new day, may we continue to feel the sense of the importance of what we do. May we be aware of the limitations of our knowledge and the existence of our prejudices. May we be tempered by this self-knowledge, but not intimidated from making the decisions that we must. May we have confidence in our ability and a proper respect for the opinions of our fellow delegates. And may we not forget that we represent not only those who have sent us, but those who are not yet born. For this purpose, we ask for guidance, for knowledge, for wisdom, but most of all for tolerance and understanding. Amen.

**PRESIDENT GRAYBILL:** We'll take the attendance by voting Aye on the voting machines.

**CLERK HANSON:** Mr. President, may Delegates Davis and Kamhoot be excused, please?

**PRESIDENT GRAYBILL:** Very well.

**CLERK HANSON:** Delegate Blend, Delegate Brown, Delegate Kelleher, Delegate Reichert.

**PRESIDENT GRAYBILL:** Who's absent? Call the absentees again. Very well. Take the roll.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Excused |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |

| | |
|---|---|
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

**CLERK HANSON:** Mr. President, 99 delegates present, 1 excused.

**PRESIDENT GRAYBILL:** Very well. Order of Business Number 1, Reports of Standing Committees.

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Order of Business Number 2, Reports of Select Committees.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 3, Communications.

**CLERK HANSON:** "Helena, Montana, March 13th, 1972; Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15 (2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of Maurice Mulcahy, license number 69-72, has been reinstated as of March 13th, 1972. Sincerely yours, Frank Murray, Secretary of State." Mr. President.

**PRESIDENT GRAYBILL:** Very well. Order of Business Number 4, Introductions.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 5, Final Consideration.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 6, Adoption.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 7, Motions and Resolutions.

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Order of Business Number 8, Unfinished Business.

Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates. It is my pleasure this morning to introduce the pages for the week. Will all pages come forward please. As I call your name, please stand and remain standing. The first one is Andy Shipp from Saco, Montana; Jim McLean from Brady, Montana; Brian Furlong from Kalispell, Montana—Brian is the son of our fellow delegate, Noel Furlong; Denise Johnson from Anaconda—and Denise is the daughter of our fellow delegate, Peter Lorello from Anaconda; Roberta Korsmoe from Great Falls; Susan Leaphart from Helena; Debbie Beartusk from Lame Deer; Alberta Harris from Lame Deer; Pattie Robinson, Lame Deer; Chris Fisher, Ashland; and Nancy Klingman, Billings. And one of the pages will step forward and greet the Convention.

**PAGE JIM McLEAN:** Good morning. As you know, there are 12 pages serving you this week, and each of us are very happy to be here and are anxious to serve you to the best of our ability. I would like to encourage you to use the pages as much as possible, because with 12 pages serving you this week, we have an abundance of help available. Thank you.

(Applause)

**PRESIDENT GRAYBILL:** We're very happy to have you pages with us, and your names will appear in today's proceedings, and you'll get a copy to take home. We are certainly looking forward to working with you this week. Thank you. Mr. Champoux.

**DELEGATE CHAMPOUX:** I inadvertently forgot one of the pages, Chris Tiel, at the end, from Billings. Thank you.

(Applause)

**PRESIDENT GRAYBILL:** Order of Business Number 9, Special Orders.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 10, General Orders. Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** The motion is to move the committee into Committee—move the Convention into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** So ordered.

(Committee of the Whole)

**CHAIRMAN GRAYBILL:** Mr. Clerk.

**CLERK HANSON:** "March 14th, 1972. The following committee proposals are now on General Orders: Public Health; Local Government; General Government; Style and Drafting Report Number 6, Natural Resources; Style and Drafting Report Number 7, Revenue and Finance." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Ladies and gentlemen, this morning we'll take up Natural Resources and Agriculture Style and Drafting first. And unless we hit trouble, we'll take up Revenue and Finance Style and Drafting second. If you'll all find your Natural Resources books, then we'll get ready here. You should begin on page 3 if you want to follow more easily. Very well. In accordance with our practice, we'll read the section head, and Mr. Schiltz will then describe the Style and Drafting changes. Oh, Mr. Burkhardt's going to do it today. Very well. Mr. Clerk, we'll start with Environment and Natural Resources Article. Will you read Section 1.

**CLERK HANSON:** "Section 1. Protection and improvement"; containing three subsections. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** When—I move that when this committee shall rise and report, after having had on consideration this Report Number 6, Style and Drafting, and having considered Section 1, approve the same. Mr. Chairman, you'll note that in this section we have changed an "a" before "clean and healthful", deleted the words "the Montana" before "environment" and then added "in Montana" thereafter, in order to preserve the sense of amendments adopted in Committee of the Whole. The other changes in the section do not change substance.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 1, sub. 1, Natural Resources—Environment and Natural Resources Article? Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. This isn't my wording and I don't know that it makes much difference, but I think that—whether it was Mr. McNeil—or I don't remember who—but the idea of putting "the Montana environment" was meant to refer to the way it was now. And it might be that if you had "a clean and healthful environment of Montana"—I'll refer to Mr. McNeil, but I'd like to hear his comments, because I think that this was his concern.

**CHAIRMAN GRAYBILL:** In other words, the language was "a clean"—was "the Montana environment" and now it's "a clean and healthful environment".

**DELEGATE ECK:** Yes, and I admit that "a clean and healthful environment in Montana" isn't really what we want to say either.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. Mrs. Eck is correct in that that was the position that was advocated by the committee—that is, the majority of the committee was advocating "maintain and improve the Montana environment". However, that was changed by this Committee of the Whole with the Campbell amendment to read "clean and healthful environment". And as a result of that amendment, I believe Style and Drafting is probably correct, but it does change the—it changes intent and meaning that the majority of our committee wanted. But that is not—Style and Drafting didn't make that change; that change was made by the majority of this body adopting the Campbell amendment to insert "clean and healthful".

**CHAIRMAN GRAYBILL:** Is there further discussion of that issue, or are we going to let it go the way it is? Do you want to say "the clean"—"the clean and healthful Montana environment for present and future generations"?

Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman. A quorum of the committee met yesterday morning at 8 o'clock to go over this, and it was the consensus of that quorum that this is what the Committee of the Whole had agreed upon. So I'm not sure now just what can be done other than to accept what the Committee of the Whole did.

**DELEGATE BURKHARDT:** I'm sure that Style and Drafting would not fight an amendment if someone wished to change words at this point, but we're about to approve it, I guess.

**CHAIRMAN GRAYBILL:** Apparently, nobody does. Dorothy, are you satisfied? Very well. Is there other discussion of Section 1, sub. 1? If not, all in favor of Section 1, sub. 1, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Sub. 2.

Mr. Burkhardt.

**DELEGATE BURKHARDT:** We're going subsection by subsection. You'll note simply the change of "must" to "shall", which is a style consistency throughout the article. It does not weaken it; it's a mandate still. No substantive change. I move that, when we've had this under consideration, that we approve it.

**CHAIRMAN GRAYBILL:** Very well. Members of the body, you have before you for your consideration subsection 2 of Section 1 on Mr. Burkhardt's motion that when this committee arises and report, that it recommend the same for adoption. All in favor of subsection 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Mr. Burkhardt, subsection 3.

**DELEGATE BURKHARDT:** In subsection 3, I move that after having had it under consideration, we adopt the same. Again, no substantive change. There's merely some language changes in that one.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you on the recommendation of Mr. Burkhardt, when this committee does arise and report after having had under consideration subsection 3, that we recommend the same do pass. Is there discussion? Very well. All in favor of subsection 3, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted. Mr. Clerk, Section 2.

**CLERK HANSON:** "Section 2. Reclamation." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman. I move that after consideration of this Section 2, Reclamation, of the report by Style and Drafting, that the committee approve the same. Mr. Chairman, the only changes in Section 2 are in line 20—simply the change of the word "must" to "shall", which is stylistic, and then the dropping of some repetitious language in the 22nd and 23rd lines.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 2?

**DELEGATE AASHEIM:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I think that second sentence could be reworded and it will sound a little better. Couldn't they say "The Legislature shall provide effective requirements to meet those standards"?

**CHAIRMAN GRAYBILL:** Mr. Anderson.

**DELEGATE OSCAR ANDERSON:** I think the sentence would be clearer if they said, at the end of it, "and standards for such reclamation", instead of "for the reclamation".

**DELEGATE BURKHARDT:** One of the facts about the Style Committee is that they don't like the word "such" in that kind of usage, and so it's not been done in that manner. However, if the body wishes to consider it, why, we're open to hear it. Someone suggests striking "the" before "reclamation". Would that alter the sense of it, Mr. Schiltz, or anybody, if we were to do that?

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** No, I think we need the "the" to refer back to the reclamation we were talking about previously—"lands to be reclaimed". I would resist, as Mr. Burkhardt does, the inclusion of "such". It's bad drafting. I think the sentence is pefectly clean and perfectly clear if you read both sentences together. If you isolate the second sentence, then it may—causes some difficulty. But if you read the two together, it's very clear and very plain.

**CHAIRMAN GRAYBILL:** Mr. Schiltz. I think Mr. Aasheim's point is it's a little awkward ending with the word "reclamation". What if you said "reclamation of lands disturbed" so that we'd know you're referring to the sentence up above? You see, the word "reclamation" doesn't really appear. It's the word "reclaim" that appears.

**DELEGATE SCHILTZ:** I have no problem in doing that. I don't think it's necessary. We're always trying to eliminate words, but if it made it clearer, why, that's fine.

**CHAIRMAN GRAYBILL:** Mr. Aasheim, do you have any feeling on that matter?
Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman. Again, the quorum discussed this yesterday morning, and they felt that the language was all right. In reply to Mr. Aasheim, requirements and standards are not necessarily the same. So I would not be in favor of his suggestion.

**CHAIRMAN GRAYBILL:** Well, Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman. I think this is all right here, but perhaps adding, as Delegate Schiltz suggested, "for all lands disturbed" would certainly make it a little stronger. I wouldn't want to weaken that first section any—that first line that says: "All lands disturbed by the taking of natural resources shall be reclaimed"—and that is the intent of the committee. I wouldn't want to change that any. The second sentence would be all right. I have no objection to it. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that the words "of lands disturbed" be added on line 22.

**CHAIRMAN GRAYBILL:** The motion of Mr. Schiltz is that we add back in the words "of lands disturbed", so that the last sentence reads: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed." Is there discussion of that?
Mr. Champoux.

**DELEGATE CHAMPOUX:** Maybe I'm all off base on this, but—in terms of the substantive parts of it—but when we talk about reclamation—by whom?

**CHAIRMAN GRAYBILL:** Well, we've already—

**DELEGATE BURKHARDT:** I'm afraid that's substantive.

**CHAIRMAN GRAYBILL:** That is substantive. We've passed that problem, and that question was raised, and we left it this way on purpose, I guess. Is there further discussion of Mr. Schiltz's amendment? If not, all in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** All right, the Ayes have it, and we'll add it—back in the words "of lands disturbed".

**DELEGATE BURKHARDT:** Mr. Chairman. I move, then, that when this committee does arise and report, they approve this Section Number 2, as amended.

**CHAIRMAN GRAYBILL:** Very well. You've heard the motion of Mr. Burkhardt. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 3.

**CLERK HANSON:** "Section 3. Water rights"; containing four subsections. Mr. Chairman.

**DELEGATE BURKHARDT:** Mr. Chairman. I move that when the committee does arise and report, after having had under consideration Section 3 of the report on Environment and Natural Resources from Style and Drafting, that the same be adopted. This—

**CHAIRMAN GRAYBILL:** Subsection 1.

**DELEGATE BURKHARDT:** There has been a bit of reordering and deleting of language, but in—no change in substance in subsection 1.

**CHAIRMAN GRAYBILL:** Any discussion of 1—subsection 1? All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** Subsection 1 is adopted. Subsection 2.

**DELEGATE BURKHARDT:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration subsection 2 of Section 3 of this report of Style and Drafting, that the same be adopted. In Section 2—or subsection 2 of this section, there was the attempt on the part of the—well, on page 5—I'm trying to read this language and understand it. Perhaps you're following it there. You'll note an explanation for what the changes are in that section.

**CHAIRMAN GRAYBILL:** Well, Mr. Burkhardt, you either better tell us, or we'll have to stop and read it.

**DELEGATE BURKHARDT:** I'll read it. "It should be noted that the substantive committee comments appended to subsection 2 were that Section 15, Article III, of the present Constitution were duplicated verbatim to preserve the substantial number of court decisions interpreting and incorporating the language." But there's been a bit of style cleanup, and we just wanted to call your attention to it.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 3, subsection 2?
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I think what the committee should know is that what we're really saying there in our comment on Section 3 is that we don't particularly like the drafting, but we did not disturb the drafting because there were a great many court decisions involving that verbiage, and so we kept it as it is. We're covering our own skirts a little bit.

**CHAIRMAN GRAYBILL:** Very well. Is there any discussion of subsection 2 of Section 3? If not, all in favor—
Mr. Simon.

**DELEGATE SIMON:** May I ask Mr. Schiltz a question, please?

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHILTZ:** Yes.

**DELEGATE SIMON:** Jack, in the storing of water—because there are some things going on in the Red Lodge area where people are building quite good-size ponds—what happens to a pond, as far as public use, if it would be an acre or two? I mean—

**DELEGATE SCHILTZ:** I have no idea, but I don't think it's affected in any way here. If it is affected in any way by this, it's substantive. And I haven't studied it substantively, I was just thinking—

**DELEGATE SIMON:** I just wondered—there's some private fishponds up there—a number of them—like—that have fishing now—that it's being planted in private ponds that—that are—it's becoming a business. And if everybody could go in and use the private ponds for their public fishing—"public use" it says—well, I want to know that private ponds—I'm sure not against anything else, but I'd sure want to know that private ponds would be protected—if a person wants to go in business, which some are doing, that they would not be for public use.

**DELEGATE BURKHARDT:** Mr. Chairman. It seems to me we're getting into a substantive thing here that I'm not sure, at this moment, we're able to handle. But maybe you're going to rule otherwise.

**CHAIRMAN GRAYBILL:** No, I'm not going to rule otherwise. I think it is substantive. I think the point is that any use of water is held to be a public use, Mr. Simon, and therefore you must handle the water in a manner consistent with the public. Now, whether or not that would mean that they'd have access to fish, I don't know; but you can't pollute the water, in other words, I think that is the point. Is there any further discussion of subsection 2?

Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. On this, there's absolutely no intent on the part of the committee to change anything in that respect. I think some people—I saw a letter to the editor that Mrs. Mansfield gave me yesterday—some people are reading some things in which this really doesn't say. And—if you got a pond, it's the same thing as it always has been. You can—if you have a private fishpond and you start it now, the only thing that would ever change would be if you didn't have any water rights to put the water in the fishpond. This is—but other than that, things are the same as they've always been.

**CHAIRMAN GRAYBILL:** Very well. All in favor of Section 3, sub. 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** All opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 3, sub. 3.

**DELEGATE BURKHARDT:** Mr. Chairman, I move that when this committee does arise and report, after having considered subsection 3 of Section 3, that the same be adopted. You'll note that there are just style changes here and a verb added to make it clear.

**CHAIRMAN GRAYBILL:** All in favor of subsection 3, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Subsection 4.

**DELEGATE BURKHARDT:** In subsection 4, there's very little change. I move that when this committee does arise and report, after having had it under consideration, that it move the same be adopted. It's pretty apparent. There is a comma that's been added and a word that's been scratched.

**CHAIRMAN GRAYBILL:** Any discussion of subsection 4? If not, all in favor of subsection 4, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** It's adopted—Oh, all opposed, say No.

(No response)

**CHAIRMAN GRAYBILL:** Now, it's adopted. All right, now, Section 4, Mr. Clerk.

**CLERK HANSON:** "Section 4. Cultural resources." Mr. Chairman.

**DELEGATE BURKHARDT:** Mr. Chairman. I move that when the committee does arise and report, after having under consideration Section 4 of this report, that the same be adopted. This is a new one, and there are no changes of substance in it.

**CHAIRMAN GRAYBILL:** Any discussion of Section 4? All in favor of adopting Section 4, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Now, if you'll turn to page 7, the sections on agriculture appear. Mr. Clerk, will you read Section 1.

**CLERK HANSON:** "Agriculture—Section 1. Department of Agriculture." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman, the wording of this Section 1 in the Department of Agriculture—well, let me make those little words first. Let's see—Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 1 of this report, that the same be adopted. Mr. Chairman, there is in this section a bit of rewording, and there was earlier some question on the part of some who had been present on that committee about the meaning of the changes, but there is no substantive change. In fact, it's a stronger statement legally, evidently, to say "There is a Department of Agriculture", rather than to put it in the future in a kind of false imperative. Therefore, we present this as style here.

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman. Mr. Burkhardt, don't you think that "shall" would be a better word than "is"?

**DELEGATE BURKHARDT:** Let me, Mr. Conover, share with you some real legal interpretation. It's a chance to impress the body with some of the adviser capacity that we received from Mr. Gardner Cromwell in our committee, and I think it's a very convincing case that he makes. A draftsman, in using language, frequently uses the word "is" rather than "shall" or "shall not". Evidently, the intent has to do with a legal result, and you can announce the result simply by the word "is" rather than by using a kind of future tense. And in this case, there's no question but what the department exists and will exist. And there's also a provision for funding in the next section. I'm sure that some lawyer could speak to this in more depth than I, but if you have a question, I would be happy to share his report with you which—I think in other sections of the Constitution, we followed the same style and have used simply the declaratory rather than the imperative tone and said, "it is".

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I'm not happy with this section. I feel that when you say "there is"—does that guarantee in the future that we'll have a Department of Agriculture? I think "There shall be a Department of Agriculture". Actually, under reorganization, the Department of Agriculture is almost a skeleton, as it exists now.

**DELEGATE BURKHARDT:** Mrs. Bates, if I may answer—

**CHAIRMAN GRAYBILL:** Just a moment, Mr. Burkhardt. Are you asking a question?

**DELEGATE BATES:** No, but I'm—I would be happy to retain the original wording.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, members of the committee. This is a basic style thing. If you look at it this way, I think you'll see the wisdom of it, or the reason for it. If you say "there shall be", we're talking about sitting here and drafting a constitution. But, once this constitution is adopted, for the rest of our lives and while that constitution is alive, we're continuing to say "there shall be" when the fact of the matter is that, once the vote is taken and this is approved, then there is a Department of Agriculture and we're no longer saying there shall be one in the future. We're saying what the situation is now, and we've done that consistently throughout. In the Judicial Article, if you still have it around, we say "the Supreme Court of the"—well, let me see, "the judicial power of the State of Montana is vested in the Supreme Court". We don't say "shall be" because it will be a fait accompli at that time.

**CHAIRMAN GRAYBILL:** Mr. Schiltz and Mr. Burkhardt, the Chair does not wish to nitpick the section, but I see a substantive change. The old language said that the Legislative Assembly must provide for the Department of Agriculture. The new language you put in says "The Legislature shall provide appropriations for agriculture", but it doesn't say you have to provide for the State Department of Agriculture. Now, I wonder if you don't want to say, "The Legislature shall enact laws and provide appropriations for the said department and to protect and enhance". In other words, the body did pass language that said that the Legislature shall provide for—now, maybe "provide" means nothing but set up, but maybe it means more. I don't know, that's the question I raise. It looks to me like you've appropriated money for agriculture but you haven't forced the Legislature to appropriate money for the department, which, I think, was the point of the argument anyway.

**DELEGATE BURKHARDT:** (Inaudible) Mr. Schiltz on that one, I'm sure.

**CHAIRMAN GRAYBILL:** Mr. Schiltz, you've been yielded to.

**DELEGATE SCHILTZ:** I'm working on it.

**CHAIRMAN GRAYBILL:** Maybe I'm—maybe the words "provide for the Department of Agriculture" means nothing but set it up, but maybe it meant more than that. I don't know.

**DELEGATE SCHILTZ:** Well, I can see your point. I don't think we considered it quite that way. I'm not prepared this fast to make an amendment, but somebody else might be.

**CHAIRMAN GRAYBILL:** Well if—was it the sense of the body when you debated agriculture that the—that you wanted a Department of Agriculture funded by the Legislature? If that's the point, then it's easy to say so by saying "and provide appropriations for the said department and to protect and enhance".

Mr. Delaney.

**DELEGATE DELANEY:** I would like to see the original language as passed by the body here returned, or pretty close to it—that "The Legislature must provide"—or "shall provide".

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman. The way it reads right now, Jack, is that the state could pay for our hail insurance, which would be fine, but I don't think we want it quite that way.

**CHAIRMAN GRAYBILL:** Just a minute. Mr. Burkhardt—wait a minute, now. Mr. Burkhardt, you have the floor.

**DELEGATE BURKHARDT:** Jack would say this better than I, but I don't think the committee wants to stand here and defend its language. I think we'd like to put the right thing in. And—Do you concur, Jack, on that?

**CHAIRMAN GRAYBILL:** Mr. Schiltz, do you want the floor?

**DELEGATE SCHILTZ:** Yes, I would like to get this done as rapidly as possible and still maintain what we want. But, if we read "the Legislative Assembly"—I guess we could go back to the original language without harming the style any.

**CHAIRMAN GRAYBILL:** Can you say "The Legislature must provide"? You like that word better than "Legislative Assembly".

**DELEGATE SCHILTZ:** Well, that's uniform throughout, yes. "The Legislature must provide for a Department of Agriculture and enact laws"—we'll take "The Legislature shall" out—"and enact laws and provide appropriations to protect and enhance". We could still leave out "of the state". So I move, Mr. Chairman, that we amend Section 1 by making the necessary additions and deletions so that it will read as follows: "Section 1. Department of Agriculture. The Legislature shall provide"—instead of "must provide"—"shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture period". I move that amendment.

**CHAIRMAN GRAYBILL:** All right. The first sentence would now read, then: "The Legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture." Is there any discussion of that language? Very well, all in—

Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. Chairman. As long as—at the beginning, we have now gone back and said that the Legislature should provide for the department. Could we now strike out the word "provide appropriations" and just say that they shall enact laws to protect, enhance and develop all agriculture? That would remove any fear people would have about passing appropriations for any particular phase of agriculture.

**CHAIRMAN GRAYBILL:** It looks to me that that might be substantive, Mrs. Erdmann. It seems to me, Mrs. Erdmann, that this body directed, when it passed this section initially, that appropriations could be made, if necessary, to protect, enhance and develop agriculture. And "providing for" may or may not mean appropriations, so if you take out "appropriations", I think you've substantively changed it now. If anyone has a different idea, I'd like them to speak to it, but—Very well. "The Legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture." Further discussion? Mr. Burkhardt, I take it you don't want to discuss; you're just standing. Okay. So many as shall be in favor of the new language, as amended, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted as amended. Section 2, Mr. Clerk.

**CLERK HANSON:** "Section 2. Special levies." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** (Inaudible)

**CHAIRMAN GRAYBILL:** Would you start over again?

**DELEGATE BURKHARDT:** I move that when this committee does arise and report, after having had under consideration Section 2 of this article, the same be adopted. Mr. Chairman, in this section, the only real change was in making plural the word "levies", rather than "levy", because the series of things for which money could be raised indicated that this might be called for. Otherwise, no substantive change.

**CHAIRMAN GRAYBILL:** Any discussion of Section 2? All in favor, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Section 2 is adopted. Very well. I think we've completed our adoption of Natural Resources and Agriculture, and rather than rise and report, let's lay it on the side and take up Revenue and Finance. And if you'll turn to page 4, you can follow most easily—page 4 of the Revenue and Finance Style and Drafting proposal.

Mr. Clerk, would you read the title and Section 1.

**CLERK HANSON:** "Revenue and Finance. Section 1. Tax purposes." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1, Style and Drafting Report Number 7, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** We've changed the title only, in Section 1. It did read "Public purposes", and we didn't think that was descriptive. We changed it to "Tax purposes".

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 1? All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 2.

**CLERK HANSON:** "Section 2. Tax power inalienable." Mr. Chairman, Section 2.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 2, title—Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, again we changed the title as not being descriptive of the material. Instead of "Surrender clause", we said "Tax power inalienable". Otherwise, a minor style change.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 2? Very well. Section 2—all in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Section 2 is adopted. Section 3.

**CLERK HANSON:** "Section 3. Property tax administration." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, Style and Drafting Report Number 7, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** In this case, we had problem—we restyled the whole first sentence because, as it read before the restyling, property would be equalized, and that gave us a problem because we didn't know how you could equalize property. So we rewrote it to say: "The state shall appraise, assess and equalize the valuation of all property." Otherwise, only style.

**CHAIRMAN GRAYBILL:** Is there discussion of Section 3?
Mr. Anderson.

**DELEGATE OSCAR ANDERSON:** There's a clause in here where you cannot tax certain property. Would they be able to appraise, assess and determine the valuation on the property that was not subject to taxation according to law, like exempt property?

**DELEGATE SCHILTZ:** Is Mr. Anderson asking me a question?

**DELEGATE OSCAR ANDERSON:** Yes.

**DELEGATE SCHILTZ:** Well, if it is, it's substantive—we—it's somewhere else if it's there; and if it isn't there, it isn't there. We only took what we got from the floor.

**CHAIRMAN GRAYBILL:** Mr. Anderson, I don't quite understand you. It says here, "appraise, assess and equalize the valuation of all property which is to be taxed". So it wouldn't apply to exempt property. Maybe I don't understand you, but I don't think the clause applies to exempt property. Is there other discussion?
Mr. Anderson.

**DELEGATE OSCAR ANDERSON:** My point was this. Is—if they should decide to say that all the people over 65 years of age should be subject to an exemption, would the state then have the right to come in and value that property and find out—or appraise it—or find out anything about it for tax purposes, to find out how much they were lacking or—in that manner?

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE SCHILTZ:** I don't—I'm not too clear, but if Mr. Anderson would look at page 5, on line 4, where they have exemptions, you'll see that listed as "(e) or any other classes of property". I suppose that could be within that other class of property if the state ever decided to exempt it, or the Legislature could exempt it.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Will Mr. Schiltz yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHILTZ:** Yes.

**DELEGATE HABEDANK:** Mr. Schiltz, as this was devised by the Revenue and Finance Committee and passed by the Committee of the Whole, the words "to be taxed" were in the original measure as shown on line 17. Will you explain why you dropped the words "to be taxed"?

**DELEGATE SCHILTZ:** We didn't drop them. We still have them. I'm looking at line 14, page 4. Well, we're not on that section yet, Mr. Habedank.

**DELEGATE HABEDANK:** Okay, that answers the problem.

**CHAIRMAN GRAYBILL:** Is there further discussion of Section 3? All in favor of Section 3, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Section 4.

**CLERK HANSON:** "Section 4. Equal valuation." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, you'll note, on line 19, that we took out "county purposes". We did that. It would have read, "established by the—or for state and county purposes". We took "county purposes" out so the Section 4 would be consistent with Section 3, which provides that the state shall do all assessing and equalizing, et cetera. And "county purposes" would serve no purpose there except to confuse the problem. Now, as to the question Mr. Habedank asked me, why we dropped "to be taxed" on line 17, well, we dropped it because, if it isn't going to be taxed, why, it won't be subject to this section. But—all taxing jurisdictions shall use the assessed valuation of property. And when you say "taxing jurisdictions", you're saying the same thing as you are when you're talking about "to be taxed".

**CHAIRMAN GRAYBILL:** Very well. Is there any other discussion of Section 4?

**DELEGATE ESKILDSEN:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Why did we put in "county purposes", then, in the first place?

**DELEGATE SCHILTZ:** Mr. Eskildsen, I had a problem with you last night when I didn't know whether you were asking a question or not. Are you asking one now?

**DELEGATE ESKILDSEN:** Yes, I'm asking you why we put it in there.

**DELEGATE SCHILTZ:** I don't know. You'd have to ask the committee; but, Joe, if you'll look at Section 3, when you put "county purposes" in, you just weaken Section 3. And—because all—under Section 3, the state is doing all of this assessing and equalizing and evaluating and appraising. Then if you come down here and say, "for state and county purposes", it seemed to the committee, at least—and maybe they were wrong, and I point it out to you for that reason—that it destroyed the intent of Section 3.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** Well, "state and county purposes" was used originally because that's the wording of the present section of our Constitution relative to this article. It requires all property to be assessed the same for all tax purposes. I don't think, actually, Style and Drafting has done any major changes or done any substantive changes to Section 4.

**CHAIRMAN GRAYBILL:** Is there other discussion of Section 4? Very well. So many as shall be in favor of Section 4, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 5.

**CLERK HANSON:** "Section 5. Property tax exemptions"; containing two subsections. Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 5, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, you will notice that all of this subsection has been extensively redone. It was done with the concurrence of the substantive committee in charge. There are no substantive changes, although it has been rather extensively changed. We call attention, in the comments, that though property of the United States is listed there, you can't—nobody should draw the inference that in any way the State of Montana can, in fact, tax property of the United States. We just noted that for the sake of noting it, however. That's all, Mr. Chairman.

**CHAIRMAN GRAYBILL:** I take it that the "A" and the "B"—you've segregated it into classifications. Is that what you've done?

**DELEGATE SCHILTZ:** That's right. We listed—we said the Legislature may exempt from taxation, and then we said what—the A, B and C—what could be exempt, and we made a series of them. We think it's more intelligible that way, instead of running them all together, and the committee concurred with us.

**CHAIRMAN GRAYBILL:** Is there any discussion—any further discussion of subsection 1-A and -B of Section 5? If not, all in—
Mr. Harbaugh.

**DELEGATE HARBAUGH:** Does this include C?

**CHAIRMAN GRAYBILL:** —A, B and C.

**DELEGATE HARBAUGH:** Is C a complete sentence there, or what is it related to?

**DELEGATE SCHILTZ:** Mr. Harbaugh, none of them is a complete sentence. They're a complete sentence when taken together with "The Legislature may exempt from taxation colon".

**DELEGATE HARBAUGH:** I see. Okay. Thank you.

**CHAIRMAN GRAYBILL:** Very well. All in favor of subsection 1-A, -B, and -C of Section 5, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Subsection 2.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 5, subsection 2, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, we made only style changes there, nothing significant that needs to be noted.

**CHAIRMAN GRAYBILL:** All in favor of section—subsection 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Now, Mr. Clerk, will you hand out the sheets of paper placed on our desks here about anti-diversion. The committee will be in order. Will the clerk read Section 6.

**CLERK HANSON:** "Section 6. Highway revenue diversion—Highway revenue nondiversion"; two subsections. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 6, Style and Drafting Report Number 7, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I can see what's coming here, so I would like to make a comment or two. I think, in view of the debate that is coming, that if we can adopt the stylistic changes on Section 6 as it came from the floor, that then we could work on this proposal that will be coming up from the standpoint of the stylistic changes we made. Now, we went in—there are no substantive changes, but we went into this in considerable detail with the substantive committee that was in charge of Revenue and Finance, and they're agreed and we're agreed that this is a much more intelligible section than it was in the old statute. Everybody had difficulty reading that old—or the old Constitution; everybody had difficulty reading that. So you'll know, we thought "highway earmark" was kind of an inelegant term. We debated quite a while trying to find the right words that were descriptive for the section. We arrived at "highway revenue nondiversion". We're not too happy with that, but it's the best we could come up with. With that, Mr. Chairman—otherwise, everything was style. All the substance is there that was there before, and there's no change in substance.

**CHAIRMAN GRAYBILL:** The Chair intends to consider the matter of the anti-diversion proposals at the time—at this present time while we're considering Section 6, but the Chair agrees with Mr. Schiltz that we should first direct our attention to the style changes that Style and Drafting has made. Is there any discussion of those?

Mr. Harper.

**DELEGATE HARPER:** I'm just wondering, Mr. Chairman, if "highway revenue diversion" is not actually a better title for the entire section than "highway revenue nondiversion". I realize that it speaks to both subjects, but the details of it are about the diverted tax.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Well—we took the position—we thought of that, Mr. Harper, and we took the position that the basic purpose of that constitutional amendment was that highway revenues should not be diverted. And we considered what this three-fifths of the Legislative Assembly would do to it, and we decided that that would be the only exception to their nondiversions. So that's—it's just a semantic thing.

**CHAIRMAN GRAYBILL:** Is there other discussion of the language used by the committee in Style and Drafting?

Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. I know probably this is different than Style and Drafting, but I'd like to ask a question of Mr. Schiltz, please.

**DELEGATE SCHILTZ:** I yield.

**DELEGATE MAHONEY:** Now, would this stop the Governor from vetoing a diversion?

**CHAIRMAN GRAYBILL:** The question is out of order. Very well. Is there any other discussion of the language—of the Style and Drafting language here? If not, all in favor of Style and Drafting's language and sectioning here of Section 6, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** All right, it's adopted. Now, who wants the floor?

**DELEGATE SCHILTZ:** Mr. Chairman, we have a subsection 2; do you want me to move that, too?

**CHAIRMAN GRAYBILL:** Oh, all right. Let's move subsection 2.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6, subsection 2, Style and Drafting Report

Number 7, it recommend the same be adopted. Only style changes, as I previously explained.

**CHAIRMAN GRAYBILL:** Any questions? All in favor of subsection 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** And it's adopted.
All right, now, Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman, I would like now to move to suspend the rules and be heard on the same.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Have you an amendment—have you a motion to send to the Chair? I have this sheet, but I haven't your motion. The—Rule Number 74 requires—and I'll wait while you prepare one—but it requires that the reason for suspending the rules be specifically stated. Mr. Brown makes a motion to suspend the rules to reconsider allowing reconsideration of antidiversion provision to be put on the ballot as an alternative. So the purpose is to allow the reconsideration of an antidiversion provision to be put on the ballot as an alternative.
Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman. At the time Section 6 was adopted, I was on the prevailing side and still believe that the present Section 6 from Style and Drafting should be part of the Constitution. However, we also had a motion, at that time, by Mrs. Babcock to place an alternate provision on the ballot. I won't go into the merits of it. It's similar to the old nondiversion. It prohibits the three-fifths diversion and puts language in allowing expenditures for pollution, drivers' education, highway patrol, et cetera. At that time, I voted against Mrs. Babcock's motion. It was my understanding that it was premature and that Style and Drafting would bring back a recommendation to the floor as to what matters would go on the ballot. For that reason, many of us voted against Mrs. Babcock's motion. Now, I feel that there's a large segment of our society and voters, various contractors, the Triple A, and various groups, who are vitally interested in this highway diversion. There's also a large group of labor and employees of these people who are vitally interested in the antidiversion measure. If they have an alternate, I believe they will take an interest in this Constitution and go out and work for it. They think it's vitally important to a large segment of the state, and I think it's vital that they have a chance to have their alternate placed on the ballot. We'll only have two alternates, as I understand it—death penalty and unicameral and possibly gambling, but I doubt that. So I think we have to look to these people and we have to look to the 1956 vote, which everyone says was a long time ago, but it was still a three-to—four-to-one majority. And as far as constitutions go, it isn't too long. So I think that we should be allowed to suspend the rules and place this alternate on the ballot. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, fellow delegates. Last night I voted to suspend the rules, to reopen on the Judicial Article—I voted that way. I sat here for, I think, two and a half hours and listened to a long debate, and I made up my mind I was—I voted for suspending the rules for something like that for the last time. This matter has been before the Convention once—or before the committee once. It's been decided. We're going to reopen this now, we're going to leave ourselves open for another 3 or 4 hours debate. We're going to throw ourselves all off of our time schedule, and sure as I—sure as we do, if we'll open on this one, we're going to open on another one tomorrow and another one the next day and another one the next day and we're not going to be out of here on the time schedule. This matter was fully debated at one time—taken—and if we vote on this reconsideration, we're just going to open it up to where we're never going to get out of here in time. And I sincerely ask this body to vote this reconsideration down, and let's get on with our next order of business on the report of the Public Health Committee, please.

**CHAIRMAN GRAYBILL:** All right—let's stick on the issue of whether to suspend the rules.
Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman. I would like to support the suspension of the rules. Would Mr. Brown yield to a couple of questions?

**CHAIRMAN GRAYBILL:** Mr. Brown?

**DELEGATE BROWN:** (Inaudible)

**DELEGATE TOOLE:** Mr. Brown, did you give consideration to simply putting the three-fifths majority of the Legislature as a side issue on the ballot?

**DELEGATE BROWN:** Either way the Convention would want to do it would be agreeable with me.

**DELEGATE TOOLE:** In what significant respect does your Section 6 on your sheet differ from the old Section 1-B?

**DELEGATE BROWN:** This allows diversion or expenditures for abatement of pollution caused by auto—motor vehicles, drivers' education, enforcement of highway safety, tourist promotion, and also brings into it state fines and forfeitures for the reason that the patrol now uses that money for the retirement fund. Otherwise, it is similar.

**DELEGATE TOOLE:** Thank you, Mr. Brown. I support the motion to reconsider.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. President. I also support the motion to suspend the rules, and I would add to what Delegate Brown—Bruce—has just said. There is another very vital, important issue that you have added here along with fines and forfeitures. The action of the committee the other day deleted the registration fees from this amendment. And this is vitally important to local government, because we're just talking about fine—about license plates now. And their effort was to refer it all to the Legislature in order to equalize, I think, motor vehicle tax, which is worthy. But license plates have always been used for the county and city roads—the $10.50 item is what I'm talking about; it's an equal sum all over the state. And this, I think, would be jeopardizing our local and city financing to have this thrown. It's nothing at the expense of the Highway Department. By taking it out, you have just sort of endangered the safety of this item which—the counties and the cities split this license money on a mileage basis. Therefore, I do support this new proposed suspension of rules.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann. The Chair would point out to you that the purpose of the motion so far is to consider an alternative only. And if you expect to reach any of the language, substantively, of Section 6 in the majority report here, you have got to broaden. I understand it's in that, but if it goes on as an alternative, you'll have it in one and out of the other. Now, I'm merely pointing out to you that if you expect to reach the language substantively, you will have to broaden the motion to suspend the rules.

Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. I believe that this is the question I have, and I think I would ask the Chair just how narrow this is. Now, is it possible, under the motion we have, to consider Mr. Toole's suggestion, for instance? And is it possible at all to reconsider any of the language that is already in Section 6?

**CHAIRMAN GRAYBILL:** Well, it's the Chair's present understanding that it would allow reconsideration of antidiversion provision to be put on the ballot as an alternative. So I think that the one before you is only one possibility that could be put on the ballot. And I'm positive that if the thing prevails, there'll be others—other proposals. But I think it does not yet allow us to reach the language of Section 6 which we have just adopted in Style and Drafting, because it speaks only to an alternative on the ballot.

**DELEGATE ECK:** So that in this case if, in reconsidering, we decided to go with the—whether or not to keep the three-fifths provision, which to me would—seems a much more understandable issue to take to the voters than two issues which state, in very different terms, then, Mrs. Erdmann's concern for the license fees that go to the city—that we could not reconsider that at all. Is that right?

**CHAIRMAN GRAYBILL:** You could put it in the new one, but you—the one that was on the side—but you couldn't put it—you can't change it in the body unless you broaden the motion to suspend the rules.

**DELEGATE ECK:** I think you should add it. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman. I just want to say that the majority of the committee still feels that what we have is adequate. But, of course, if the body thinks it should be on the ballot, that's another question. But the committee does feel that what we have is adequate and it's all right the way it is. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman. I realize it's important for us to maintain a schedule and finish our work on time, but I think it's more important that we make wise decisions. And sometimes it is necessary to reconsider our actions, and I surely support the motion to suspend the rules to reconsider.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. Normally, I'm not in favor of suspending the rules nor I—am I in this instance, because I do not consider this a suspension of the rules for the same subject. When we discussed this matter the other day, we were discussing the antidiversion amendment which is in our present Constitution and the substitution which has been made. In this instance, we are asking the suspension of the rules so that the matter may be discussed with the idea in mind of placing the two proposals as alternates on the ballot, which is quite a different matter. Now, I remember, the other day, that there was a lot of talk concerning the way the bureaucracy over across the street operates, and many people have been offended by it, and I have felt that way myself. However, we've got to look at this in a long-range view. In the present Constitution of the State of Montana, Section 1—

**CHAIRMAN GRAYBILL:** Mr. Romney, I want to know how this affects the motion to suspend the rules.

**DELEGATE ROMNEY:** I think if the Chair permits me to continue—

**CHAIRMAN GRAYBILL:** Well, I—just explain to me how it applies. What's your point? What are you driving at?

**DELEGATE ROMNEY:** The argument has been that the people, when they voted on this matter in 1956—that it has been a long time. I wish to, by analogy, demolish that argument in order to provide reason for a suspension of the rules.

**CHAIRMAN GRAYBILL:** It seems to me that you are arguing the issue of whether or not an alternative should be put on there. We're arguing the issue of whether or not the rules should be suspended. Once the rule—once they are suspended, then we have the—still have the choice of whether or not to put something on the ballot. And I don't want substantive argument on the issue of what to put on or why we should put it on; I only want to hear what you have to say about suspending the rules.

**DELEGATE ROMNEY:** Very well. I feel that we've got to—we have a right and it's for the best interests of the State of Montana to have this matter placed upon the ballot so that the people can make a decision.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President, I just rise in support of Delegate Brown's motion to suspend the rules.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** I, too, rise in support of the motion to suspend the rules. I have had the experience, as have many others, of finding that the Highway Department is not very responsive to the Legislature, but I nevertheless feel this is of such importance, and I want to hear all that Delegate Romney and others have to say when we get the opportunity to debate the merits of the question.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. President. I oppose the suggestion to suspend the rules. I was real proud of the committee when we followed the recommendation of the Revenue and Finance Committee in this antidiversion section. And I would hope that the body remains on that decision and votes down the reconsideration.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I rise in support of the suspension of rules on the basis that what's sauce for the Judiciary ought to be sauce for the Revenue and Finance.

**CHAIRMAN GRAYBILL:** Very well. The issue is on whether or not to suspend the rules. Do you want a roll call vote? All right, you want a roll call vote. So many as shall be in favor of suspending the rules, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well. Take the ballot.

Aasheim .............................. Aye

| | |
|---|---|
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Absent |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Absent |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Excused |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Absent |
| Furlong | Nay |
| Garlington | Aye |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Absent |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Absent |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Absent |
| Warden | Nay |
| Wilson | Absent |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 54 delegates voting Aye, 37 voted No.

**CHAIRMAN GRAYBILL:** 54 delegates having voted Aye and 37 having voted No, we'll suspend the rules. Is Mr. Etchart in the room? Would a page go and check the lobby for Mr. Etchart. He was here a minute ago.

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President. I rise for a point of order.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE HABEDANK:** As I read Rule 74—and I'm in favor of reconsideration of this—but it says, "The rules may be suspended for a specified purpose by the affirmative vote of two-thirds of the delegates present or a majority of all of the delegates of the Convention, whichever constitutes the lesser number." Does that mean—shouldn't that mean that it takes two-thirds?

**CHAIRMAN GRAYBILL:** No, whichever constitutes the lesser number. The lesser number would be 51, so it passed. Mr. Nutting, would you like to take the Chair?

(Committee of the Whole chairmanship assumed by Mr. Nutting)

**CHAIRMAN NUTTING:** The delegate, Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman. Having voted on the prevailing side, I now move that there be placed on the ballot an alternate, in the form to be provided for by Style and Drafting, in the words of Section 6, alternate, which you now have on your desks.

Mr. Chairman.

**CHAIRMAN NUTTING:** Mr. Brown.

**DELEGATE BROWN:** This alternate—in speaking for it, I do not want to speak against the present Section 6. I believe they should both be given to the voters to decide which provision they would like. The present Section 6 allows a diversion by acts of the Legislature. The alternate would not allow any diversion by the Legislature. The other differences—and I'll be brief because I've gone over them briefly—would include the fines and forfeitures by the state. This would not include county or city fines and forfeitures, of course. It would include them, because they are now included for Highway retirement funds, and we now pay the Highway Patrol out of these funds. This would also allow diversion from the present section where pollution abatement caused by motor vehicles, your driver education, et cetera. Mr. Romney is going to speak on the fact that this was put in by the people in recent years, so I won't go into that. But there is a tremendous segment of our society that is concerned about this, and I'm just positive that if this is on the ballot, it'll create interest, bring out the voters, and it will take a large segment that will support this Constitution. So I can't see where it will do any harm. We only have two matters on the ballot now. This would probably be the third and final matter, and those people who are for diversion by the Highway Department—or by the Legislature—it will still give the people a choice. And we don't want this Constitution to go down by any segment of society. So, I say, "Let's give everybody a chance and put this on as an alternate." Thank you, Mr. Chairman.

**CHAIRMAN NUTTING:** The delegate, Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. I would like to make a substitute amendment. I haven't written it out, but I think that it's so simple—

**CHAIRMAN NUTTING:** Mrs. Eck, the motion is a motion to reconsider at the present time.

**DELEGATE ECK:** Oh, excuse me. I'll wait.

**CHAIRMAN NUTTING:** Is there any further discussion?

The delegate, Mrs. Babcock.

**DELEGATE BABCOCK:** It's already passed to reconsider by 54 to 39.

**CHAIRMAN NUTTING:** That was the motion to suspend the rules, Mrs. Babcock.

**DELEGATE BABCOCK:** I beg your pardon.

**CHAIRMAN NUTTING:** Is there any further discussion?

Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, what are we reconsidering, then? I thought this was a new article to go on. I didn't realize we were reconsidering anything. It was opening it to consider a new article to go in the Constitution.

**CHAIRMAN NUTTING:** The motion is now to reconsider Section 6 with the purpose, as Mr. Brown stated, to put an alternate on the ballot. Is there any further discussion? No further discussion?

The delegate, Mr. Toole.

**DELEGATE TOOLE:** Mrs. Eck, do you have a motion before the—are you going to submit an amendment to this proposal?

**DELEGATE ECK:** Mr. Toole, yes, I am. The amendment I wish to—or the substitute motion I wish to put in when we get to that point is that, in one form on the ballot, the last sentence, with the three-fifths, is included and in another form, it is not included. My thinking on this is that in looking through these two alternates, I think that it took me—and I think it'll take any voter—too long a time to determine what the difference is between one and the other. And, you know, they'll probably end up not voting or maybe voting not the way they really intended to vote, because in the voting booth, it's too difficult to tell the difference. But I think that the main point of contention here is whether the Legislature shall be able, by a three-fifths vote, to use this money for other purposes. Therefore, if we had an alternate in the ballot—one form which was to leave the three-fifths provision in, one to take it out—I believe that this would simplify the issue and make it much more understandable. Thank you.

**CHAIRMAN NUTTING:** The delegate, Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I take it that, at this time, while we're working on reconsideration, there's no opportunity to speak on the merits.

**CHAIRMAN NUTTING:** If you—if the presentation is the motion to reconsider, there should be at least some discussion as to why you wanted to reconsider. As I understand it, Mr. Brown's decision is to—the reason he wants to reconsider is that it would be a substitution to place Section 6—or the substitute Section 6. Mrs. Eck states that if it is reconsidered, she would want to amend it in a different way. But they both have reasons for wanting to reconsider it. But if the only decision is that—to put an alternative, I would say the discussion at this time should be on that particular point.

**DELEGATE ROMNEY:** Very well.

**CHAIRMAN NUTTING:** If there is no further discussion, the question now arises on the motion by Mr. Brown that we reconsider our action and—in passing Section Number 6. As many as are in favor, signify by saying Aye.

**DELEGATES:** Aye.

**CHAIRMAN NUTTING:** Those opposed, No.

**DELEGATES:** No.

**CHAIRMAN NUTTING:** The Chair is not certain. We'll have a division. Has every delegate voted?

**DELEGATE BURKHARDT:** Something happened to the machine and a bunch of lights went out. We'd better—everybody check his button.

**CHAIRMAN NUTTING:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN NUTTING:** 48 having voted Aye, 34 voting No, the motion carries. We are now reconsidering Article Number 6.

The delegate, Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman. I now move that Section 6, as prepared by Style and Drafting, and the Section 6 now on your desks be placed on the ballot in such form as Style and Drafting may determine. And I think I've given you all my reasons for saying this should be on the ballot, so I will now close on that part. Thank you, Mr. Chairman.

**CHAIRMAN NUTTING:** Mr. Brown. Could I ask a question? What you're suggesting is, then, that Section Number 6 as in the Style and Drafting and your Section 6, which is the bottom of this sheet, would be placed as alternatives on the ballot? Is that correct?

**DELEGATE BROWN:** That is correct, Mr. Chairman. And I believe, as far as Mrs. Eck's motion is concerned, I'd have no objection to that, but I would like Mr. Schiltz to yield to a question.

**CHAIRMAN NUTTING:** Mr. Schiltz, will you yield?

**DELEGATE SCHILTZ:** I yield.

**DELEGATE BROWN:** Mr. Schiltz, if my motion would prevail, then, would not Style and Drafting prepare the form of ballot? Would that take care of Mrs. Eck's motion to—

**DELEGATE SCHILTZ:** Well, we—yes, we will prepare the ballot, and it can either be accepted or rejected by the Committee of the Whole.

**DELEGATE BROWN:** Thank you.

**CHAIRMAN NUTTING:** Mr. Graybill.

**DELEGATE GRAYBILL:** Will Mr. Brown yield to a question? Mr. Brown, will you yield to a question?

**CHAIRMAN NUTTING:** Mr. Brown, will you yield to a question?

**DELEGATE BROWN:** I'll yield.

**DELEGATE GRAYBILL:** I understand your motion to be to place these on the ballot in the alternative. Are you, by that motion, attempting to tell Style and Drafting the form of the ballot that they should use in placing these matters before the public on the ballot?

**DELEGATE BROWN:** No, Mr. Graybill, I think that would be a matter for the Convention to decide, or Style and Drafting would bring their recommendations to us and then we would vote at that time.

**DELEGATE GRAYBILL:** Mr. Chairman, may I ask another question?

**CHAIRMAN NUTTING:** Mr. Brown, will you yield?

**DELEGATE BROWN:** I'll yield.

**DELEGATE GRAYBILL:** Under that, could Style and Drafting place the committee's proposal in the Constitution as a whole and place the language you're attempting to put in here as an alternative on the side?

**DELEGATE BROWN:** I think that will be up to the Convention itself, probably, to tell Style and Drafting how they want it.

**DELEGATE GRAYBILL:** Mr. Chairman.

**CHAIRMAN NUTTING:** Mr. Graybill.

**DELEGATE GRAYBILL:** In other words, you're not trying to establish that pattern at this time?

**DELEGATE BROWN:** No, all I want to establish is that the people would have the chance to vote on one or the other.

**DELEGATE GRAYBILL:** Very well.

**CHAIRMAN NUTTING:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, is a substitute motion in order?

**CHAIRMAN NUTTING:** Yes, we only have one motion.

**DELEGATE SCANLIN:** I move, Mr. Chairman, that—as a substitute motion for the alternative on the ballot, to delete Section 2—subsection 2—of Section 6.

**CHAIRMAN NUTTING:** Do you have that written out, Mr. Scanlin? I can't—

**DELEGATE SCANLIN:** It's just a matter of deletion, Mr. Chairman.

**CHAIRMAN NUTTING:** Delete subsection 2?

**DELEGATE SCANLIN:** Right—of the present Section 6.

**CHAIRMAN NUTTING:** Mr. Scanlin, I—am I right? You're amending—I'm afraid I don't quite understand what you're doing here. On the alternative, you're—you want the same, with the deletion of Section 2, is that correct?

**DELEGATE SCANLIN:** My substitute motion would eliminate it from the ballot. Mr. Chairman, is my intent clear on this?

**CHAIRMAN NUTTING:** Yes, Mr. Scanlin. I think, at this time, you're out of order, because we're on—the reconsideration was for the suspension of the rules—rather, was for the purpose of establishing—of putting on the alternative. And if you are amending the original Section 2, then I would say you're out of order at this time.

**DELEGATE SCANLIN:** Thank you, Mr. Chairman.

**CHAIRMAN NUTTING:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, I thought Mr. Scanlin was making the same motion I intended to make, but if not, and if you can understand my amendment, would you read it.

**CHAIRMAN NUTTING:** It's "A substitute motion to put as an alternative on the ballot omitting Section 2 of Section 6, page 6, line 10. Signed: Eck."

**DELEGATE ECK:** Mr. Chairman.

**CHAIRMAN NUTTING:** Mrs. Eck.

**DELEGATE ECK:** My intention here is

pretty much what I just explained. It's to have, as an alternative on the ballot, Section 6 as it now reads minus the subsection 2. Now, I think that probably the easiest way for Style and Drafting to do this is to put, as an alternative on the ballot, whether—you know, a Yes or a No—whether you're going to include subsection 2 or not. I think that we can leave this to them—you know, how they're going to frame it. My thinking behind this—and I'll repeat what I said before—is that I think that this is where the real issue is and that the voters can very simply decide whether they want to allow the Legislature to control these funds in this way or whether they don't want to allow them to. I think that if we have two entire sections, it will create a great deal of confusion. Thank you.

**CHAIRMAN NUTTING:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman, I beg your pardon.

**CHAIRMAN NUTTING:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman, I rise to support Mrs. Eck's proposal. The three-fifths vote of the Legislature is the heart of this matter. It's a simple proposition and easy for the voter to understand, and I think it is the most feasible way to put it on the ballot. However, if hers does not prevail, I will still support the alternative proposal of Mr. Brown. But I do want to express my firm support of Mrs. Eck, which—as being the most feasible, the most simple, and the most understandable way to place this issue on the ballot.

**CHAIRMAN NUTTING:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I would like to say to Mr. Toole and Mrs. Eck that these two provisions aren't exactly parallel. There's one source of taxation that's in one and out of the other, and I don't know that you could do that unless you amend one or the other of them.

**CHAIRMAN NUTTING:** Mr. Chairman, I would assume that the—I would take Mrs. Eck's motion to mean that she is taking Sections 1, 2, 3 and 4—Section 1 plus—without Section 2 as her alternative, which means that we have—she is using the original as it appears in the Revenue and Finance Article for one alternative, and the other alternative would be merely Section 1. That was the reason for my ruling.

Mr. McDonough.

**DELEGATE McDONOUGH:** Mr. Chairman. I think we're going at this a little backwards. I think what—we decided to suspend the rules to reconsider Section 6 for the purpose of an alternative, then we moved and passed the motion to reconsider for that purpose. I think what we should first vote on is to—whether or not we should have an alternative on the ballot. And then, when we get done with that vote, then we should decide as—the wording of that alternative on the ballot. Now, Mrs. Eck, by making this motion, makes it mandatory; you either have to pick one or the other—two of these wordings to put on the ballot. We really haven't made it as an independent issue yet, as to whether or not to put any alternative on the ballot, if I remember correctly. And I would appreciate it if you could restate Mr. Brown's motion so that exactly—we'd know exactly what it says.

**CHAIRMAN NUTTING:** The question—the motion by Mr. Brown was to reconsider our action for the purpose of placing an alternative on the ballot.

**DELEGATE McDONOUGH:** On behalf of the Revenue and Finance Committee, I'd like to ask Mrs. Eck to withdraw her motion so we can decide whether or not to put an alternative on the ballot.

**CHAIRMAN NUTTING:** That motion was passed. Now we have a motion by Mr. Brown, so we have already passed that motion. That was Mr. Brown's first motion was to reconsider for that purpose, which was passed—I can't remember; I don't have the exact figures now, but it was passed on a division. The next motion by Mr. Brown was to substitute Section 6, as it appears on your—on the sheet that was passed out to you, as an alternative—the lower one. Then Mrs. Eck amended that so that it would now be merely a change in Section 2. So that is Mrs. Eck's motion now, but both are alternatives to the original proposal.

**DELEGATE McDONOUGH:** Thank you.

**CHAIRMAN NUTTING:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. Maybe I'm just confused, but I think I'd have to challenge the ruling of the Chair on that. I don't think that, by the fact that we passed the motion to reconsider, means that we have adopted the idea that we are going to have an alternative.

**CHAIRMAN NUTTING:** Mr. Harbaugh, the Chair would welcome the challenge; however, that was the motion. Am I correct in that? The motion was to reconsider for the purpose of placing on the ballot an alternative on this issue; and that was on a division vote.

Mr. Felt.

**DELEGATE FELT:** I'm rising, first as a point of parliamentary inquiry, to further deal with this question and possibly will offer a substitute motion for all motions pending, to clarify. Because, I feel—I believe that the Chair has ruled correctly but that there's a little question in the minds of many of us, including myself, as to just what the exact effect of the Chair's ruling may be. The last—the motion made by Mr. Brown, as I understood it, was a specific motion calling for the inclusion of all the material that was distributed to us—the first section being as it was originally adopted by us from the committee report and that has been revised in Style and Drafting so that we have slightly different phraseology and numbering on the sheet that was distributed to us compared with the Style and Drafting report, which, I think, has led to some confusion—but that he does specifically call for the language in the lower part of this sheet as the alternative to be placed on the ballot. While Mrs. Eck's motion, which I think was properly ruled to be in order, calls for different wording—some wording to be taken out of the previous adopted Section 6, being called subsection 2 in our Style and Drafting report, and to place that on the ballot as an alternative to what is referred to as "modified 1-B" here in the sheet distributed to us. And that some members now feel that they want, first of all, to clearly vote on simply the proposition of whether something should be placed on the ballot as an alternative, without necessarily preferring the wording proposed by Mrs. Eck or the wording proposed by Mr. Brown. And if the Chair's ruling is that the bare vote on the motion to reconsider does also constitute a motion to place something on the ballot, then perhaps my substitute motion would not be necessary; but if the motion to reconsider, which did pass, simply means that we're ready to receive a new motion but does not encompass a decision to place something on the ballot, then I would offer as a substitute motion, if it would be in order—as a substitute for all motions pending—the simple proposition that we do accept the proposition that some alternative—the wording to be later determined—will be placed on the ballot as an alternative and with the methods of placing it also to be determined later, perhaps after recommendations from the Committee on Style and Drafting, if the thing proceeds that far. So I'd appreciate it—if the Chair has anything further to say in clarification and if the Chair feels my motion is in order, I would present it as a substitute motion at this time.

**CHAIRMAN NUTTING:** I would rule that Mrs. Eck's is an amendment and that Mr. Felt's motion is now in order, but we are now at the end of the line here on this as far as motions is concerned.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** What we voted on was a reconsideration by Mr. Brown, and even though he included in what his proposal was, he merely showed us—told us what we're—what he was going to present to us. Now, if he'd make another motion so that we could vote on whether we want to adopt his or not, then if somebody wants to get up and start amending it, we'll be in order, as far as I'm concerned. The way we are right now, we're just kind of in the air; we don't know whether we're really voting on just reconsideration or what. But I think if you would make that, Mr. Brown, so that we could have yours before us, then it would clear everything up. I think Mr. Felt's idea is kind of farfetched, because we're just kind of talking about something that we might be going to do—we might be going to put it on the ballot in some kind of form or other. We can't do it that way; we've got to have words down here. We can't vote on the idea that we think we're going to do something. Let's get it before us before we start doing that.

**CHAIRMAN NUTTING:** Mr. Eskildsen, we do have such a motion on the floor—made by Mr. Brown—to accept as the decision this—the sheet as it was passed out to us, which is an alternative. Then, we have an amendment by Mrs. Eck which places, as an alternative, the language of Section 2 plus—as an alternative, the language of Section 2 without Section 1—Section 6 without Section 2 on it. So we now have those two alternatives before us.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. The point I'm making is that we merely voted on the reconsideration because he added all the rest to it. That was to inform us what we were reconsidering, what we'd probably do after we reconsidered. Now, we reconsidered and we passed that vote. Now, it's time for Mr. Brown to make a motion that we adopt what he has here before us; and when he does that, then that will be the motion before us. Then, if Mrs. Eck wants to start amending it, we'll be in order.

**CHAIRMAN NUTTING:** He has made that motion, Mr. Eskildsen. And Mrs. Brown has amended it as—or Mrs. Eck has amended it.

Mr. Driscoll.

**DELEGATE DRISCOLL:** Mr. Chairman, may I ask Mr. Felt a question, please?

**CHAIRMAN NUTTING:** Mr. Felt, would you yield?

**DELEGATE FELT:** Yes, I yield.

**DELEGATE DRISCOLL:** Mr. Felt, is it the sense of your motion that a Nay vote would indicate that it would be accepted exactly as it is—that there'd be no alternative on the ballot?

**DELEGATE FELT:** A Nay vote?

**DELEGATE DRISCOLL:** A Nay vote to your motion.

**DELEGATE FELT:** Yes.

**DELEGATE DRISCOLL:** Then there would be no alternative on the ballot if the Nays prevail in your motion?

**DELEGATE FELT:** That is—would—Yes.

**DELEGATE DRISCOLL:** Thank you, Mr. Felt.

**DELEGATE FELT:** If the Nay votes prevailed, we would have determined that we intended to place something on the ballot if we can come to an agreement on some particular wording. And you'd have to still get an Aye vote in favor of some particular wording at a later time. But if there was a Nay majority, it would end the subject.

**DELEGATE DRISCOLL:** Mr. Chairman, I rise in support of Mr. Felt's motion. It will expedite the work of this Convention. Thank you very much.

**CHAIRMAN NUTTING:** Mr. Chairman—Mr. Felt, would you yield to a question from the Chair?

**DELEGATE FELT:** Yes.

**CHAIRMAN NUTTING:** Would you limit that motion to a motion that we could get down here with the secretary?

**DELEGATE FELT:** Yes. I'm in the process of writing it, and I must—I might say that, in line with Delegate Driscoll, that this was intended to save time. And I personally do support placing some alternative on the ballot. That—yet, I can see Mr. Eskildsen's point that it's a little unusual, I think, to place before the house for its consideration, as a motion, a simple statement that we will do something. I do feel, under all the circumstances, that it is the proper procedure, myself, and I will present it in writing to the Chair. It should be there within 60 seconds if I don't have any more questions.

**CHAIRMAN NUTTING:** Mrs. Eck.

**DELEGATE ECK:** I resist Mr. Felt's motion. I think that a great many of us don't want just any antidiversion alternate on the ballot. And I certainly would not be willing—and I don't think very many others would be willing—to commit myself ahead of time to having something on the ballot without knowing what it was going to be. I think that there are still opportunities for further consideration. I mean, you know, we can—I think that there are still a couple of more coming up—I understand that someone would like to put on the ballot leaving the provision that is now in the Constitution—but I think that the only just way to deal with these is one at a time as we go along.

**CHAIRMAN NUTTING:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman. Am I correct in assuming that this motion to—of Mr. Felt's, if you vote No, that ends the issue completely, so that if Mrs. Eck wants to resist Mr. Felt's motion, she's in effect denying herself an opportunity to present any further motions?

**CHAIRMAN NUTTING:** I just got the motion here, Mr. Berg, and I'll read it. "A substitute motion that the Convention will debate the question of placing on the ballot an alternative proposal on the matters embraced within Section 6, Revenue and Finance."

Mr. Felt.

**DELEGATE FELT:** In response to Mrs. Eck's comments, a favorable vote here would not be a commitment to any particular language. It leaves everybody free to endeavor to agree upon what would be the best course of action to follow in selecting the particular thing to be placed on the ballot as the alternative. And I would hope that if this was not the case, then I would oppose my own motion, because I wish to be free to support Mrs. Eck's proposal and I wish to be free to support Mr. Brown's proposal. And I might support some other proposal, because I feel very strongly that we should place this question on the ballot. And I'm extremely proud of the committee for having included in its report this matter of a three-fifths vote, the members of the Legislature being able to set aside the dedication of these funds. But I feel that it's a question that the people will be called upon to express themselves. This will be forced upon us at one time or another. In any event, I think this is the proper time to present it to the people and that we, by adopting this motion, are simply trying to move this along to get to an orderly debate on the exact question that needs to be determined by the assembly.

**CHAIRMAN NUTTING:** The question now is on the motion by Mr. Felt that we debate the question of placing on the ballot an alternative proposal.

Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. I would like to speak against Mr. Felt's motion in the sense that I'm contending that there should not be an alternate on the ballot, I would be the first to rise, I think, and say there should be an alternate if the matter could be decided fairly by the people. I sense that that is an impossible situation. We have to face the fact that through these many years with the nondiversion amendment, that the forces that we're talking about have become rather vested, have become financially powerful. Therefore, a campaign that was—went to the people for a decision, I would predict, would be highly funded in opposition—would protect, rather dramatically, those vested interests—and that we would not get a fair vote from the people. I really feel that this is about the only body in Montana that can open that up or not open it up and, if we don't do it, that it'll just be simply impossible for the people to do it even if they wanted to.

**CHAIRMAN NUTTING:** Mr. Monroe.

**DELEGATE MONROE:** Mr. Chairman. If I understand Mr. Felt's motion properly, if I vote Nay on his motion, that there, in fact, will not be an alternative on the ballot. Now, I could be wrong at that.

**CHAIRMAN NUTTING:** That is correct.

**DELEGATE MONROE:** Okay. I would urge this body to vote Nay on his motion. I think that the other day, on March 3rd or 4th, when we discussed Revenue and Finance Article, that we voted rather significantly to take the antidiversion clause out and by a three-fifths vote, the Legislature could divert funds to other areas. And I think if we're toying with the idea of putting something on the ballot here, I think we're doing a grave injustice to the people of Montana. We, as a body, have come under some criticism as not really doing our job here at the Convention. And if we were to give them an alternative on the ballot, I think those criticisms would be very justified—that we're, in fact, passing the buck to them. It seems to me if we put many alternatives on the ballot, including this one, we're confusing the hell out of those voters. They're confused enough as it is. We're pretty damn confused right here. So I suggest that we defeat—or vote Nay in regard to Mr. Felt's motion. And on this particular instance, I'm not going to use my little rule, like I did the other day, and make a bet with you that those people who are going to change their votes are over a particular age. I won't put you in those circumstances again, even though I won my bet the other day. Thank you.

**CHAIRMAN NUTTING:** Mrs. Warden.

**DELEGATE WARDEN:** Mr. Chairman. I would just like to say that on—that I think we should leave these things up to Style and Drafting to bring back to us, so that when we're all through considering all of the articles, that they will have the determination of what is vital enough to go on the ballot. And then, we can argue that out. Thank you.

**CHAIRMAN NUTTING:** Mr. Toole—Mr. Romney—Mr. Toole, you were up.

**DELEGATE TOOLE:** Mr. Chairman, I made my lengthy speech a couple of weeks ago on this subject. Everybody knows how I feel about the evils of antidiversion. And we all know that there are powerful and well-financed groups that are involved in this, and they don't scare me a bit. But we have to face the fact of the popularity of this. Poll after poll shows that the people still favor antidiversion of fuel taxes. I don't like Section 1-B a bit—the old section. I have searched over and over again for an alternative. I like Mr. Graybill's alternative that he presented to us 2 weeks ago, but he withdrew it. I'm convinced that to save this Constitution, we must give the people a choice in this very controversial matter which indicates that the people still support antidiversion. Now, they're getting educated; and 2, 3, 4 years from now, they won't support it, because they will perceive the evils involved in it. But at this time in history, we still have to give them a choice. Therefore, under Mr. Felt's amendment—or Mr. Felt's motion—substitute motion, I think we must entertain the discussion and the debate of some sort of an alternative. Thank you, Mr. Chairman.

**CHAIRMAN NUTTING:** Mrs. Robinson.

**DELEGATE ROBINSON:** Would Mr. Brown yield to a question?

**CHAIRMAN NUTTING:** Mr. Brown, will you yield?

**DELEGATE BROWN:** I yield.

**DELEGATE ROBINSON:** Mr. Brown; is the purpose of putting this on the ballot—is to preclude what you think might be a highway users group voting against the entire Constitution because of our present Section 6?

**DELEGATE BROWN:** Well, I'm not—Yes. I think many—I'm not talking about large vested interests; I'm talking about many thousands of people that I feel are very strong for antidiversion. And if we give them no alternative, I think there is a danger that there'll be another segment that will vote against the Constitution, and I don't think we should take that chance, by very simply giving them an alternative.

**DELEGATE ROBINSON:** Mr. Chairman. Will Mr. Brown yield to one other question?

**CHAIRMAN NUTTING:** Will you yield, Mr. Brown?

**DELEGATE BROWN:** Yes, ma'am.

**DELEGATE ROBINSON:** If that's the case, if there are that many one-issue voters, would not it be true that if, as an alternative, we presented one of these watered-down amendments, they would still—they would vote Yes for the amendment but also vote No for the entire Constitution because of—that's—a watered-down amendment might pass. My point is that they have nothing to gain by voting for the new Constitution because they have what they want in the old one, if there are, in fact, that many one-issue voters.

**DELEGATE BROWN:** I don't think they're that strong one-issue. I think, they're given an alternative, they like our new Constitution—or I hope they will—and this will, then, give them an alternative to try and have their own plan in it. But if we give them no alternative, they'll have no alternative to vote No. Is that clear? Thank you.

**CHAIRMAN NUTTING:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I don't know whether this is the appropriate time to discuss this matter, but everybody else is discussing it, so I think that I will, too. There have been fears voiced by delegates in the last few minutes that the people would not have an opportunity to have a fair break in an election. I think that that is an insult to the intelligence of the electorate, and I don't concur. There has been voiced a view that if you don't vote the same way you did upon Section 6 the other day, that you'll get a black mark in the little black book, and I don't think that anyone is going to be frightened by such threats. I feel that the people are the only place where we can get an answer to this matter. There have been statements made that the vote taken in 1956 was a long time ago and that times have changed and that perhaps the viewpoint of the people has changed. That may be so, but still, I look back in the present Constitution adopted in 1889, Article III, Section 1. This reads: "All political powers vested in and derived from the people; all governmental rights originates with the people, is founded upon their will only and is instituted solely for the good of the whole." That was 83 years ago. This body, engaged in preparing a new Constitution, has adopted a similar section—Section 1, popular sovereignty—"All political powers vested in and derived from the people; all governmental rights originate with the people, and is founded upon their will only, is instituted solely for the good of the whole." Exactly the same phraseology. We haven't changed much in the last 80 years. We've maintained the same philosophy, and I think it's a good philosophy. And I think all of us have concurred in it, because we voted for it just the other day. It's not so long back to 1956, but the people spoke eloquently upon this subject back in 1956 when they enacted the antidiversion amendment to the Constitution. I have before me the abstract of the vote of that election. The aggregate vote was 160,543 for—160,543 for and 47,615 against, making the majority of Montana people of 112,928 in favor of the proposition. Now, why did that—why was there such a tremendous majority? I'll tell you why. Prior to that time, this nasty Legislature had been putting its sticky fingers onto some of this money. When it took some of that money out over a period of time, people became outraged and a movement was instituted—led by the Montana Automobile Dealers Association, older car dealers, and others—to prohibit such goings-on in the future. So, they enacted an amendment to the Montana Constitution by the vote which I just indicated. Now, how did they vote? Every single county in the State of Montana, without exception, voted in favor of this amendment. There was not a slacker in the bunch. Beaverhead voted 18—I'm going to leave off everything except hundreds here—

**CHAIRMAN NUTTING:** Mr. Romney, would you keep your comments as close to possible as the—whether an alternative should be on or not. Thank you.

**DELEGATE ROMNEY:** I will, Mr. Chairman. I don't think that anything could be more poignant than the vote. Beaverhead voted 1,833 to 732; Big Horn, 2,054 to 661; Blaine, 2,117-440; Broadwater, 855 to 85; Carbon, 2,637-917; Carter, 696-289. Cascade, Mr. President, had a vote of 10,219 to 3,726. Going on to Chouteau, the vote was 2,517 to 633. Down in Mr. Brown's bailiwick, it was 2,940 to 1,127. In Daniels, it was 1,188 to 415; Dawson, 2,933-904; Deer Lodge, Mr. Dahood's bailiwick, 4,080-1,441. Down in southeastern Montana, in Fallon County, 1,031 and 373; Flathead—I see the gentleman, Mr. Murray—his county voted 9,347 to 2,966. Fergus, 3,954 and 1,582. My friend, Mr. Roeder's county voted 7,123—I wish he was here so he could hear this—to 1,714. Garfield, 601 to 56; Glacier 2,609-685; Golden Valley, 425-125; Granite, 874-363; Hill, up on the Hi-Line, 4,578-1,123; Jefferson, 1,128-419; Judith Basin, 1,066-373. My friend, Mr. McNeil's county, thirty-six sixty-three to one nine. Here's Lewis and Clark county, Mr. Brazier's home country, 8,746 to 2,236. Again, up on the Hi-Line, Liberty had 747 to 202.

**CHAIRMAN NUTTING:** Settle down, please.

**DELEGATE ROMNEY:** Lincoln, Mr. James', 3,154-980; Madison, 1,578-640; McCone, 1,046-402; Meagher, 687-214; Mineral, 872-209. Mrs. Robinson's country down here in Missoula, near the beautiful Bitterroot, 11,018 voted for it, 2,839 voted against it; Musselshell, 1,159-325; my fellow journalist, over in Park County, 3,362-1,651; Petroleum, 276-113; Mr. Eskildsen's area, 2,194-510; Pondera, 2,079-596; Powder River, 707-272—I wonder what the boys down there would think about it now; 1,895-661 for Powell; Prairie, 596 to 214; Bitterroot, Ravalli County, Mr. Ward—I'm sorry he's not here right now—3,450-1,278; Richland, 2,821-795, Mr. Habedank; Roosevelt, 2,758-812; Rosebud, 1,628-495; Sanders, 2,211-638; Sheridan, 1,939-579; Mr. Holland, Silver Bow voted 7,556 to 2,485; Stillwater, 1,745-510; Sweet Grass, 1,049-323; Teton, 2,224-578; Toole, 2,334-593; Treasure, 368-113; Valley, 3,552-789; Wheatland, 1,020-271; Wibaux, 516-183; and Yellowstone—I see my friend, Mr. Blaylock, gazing intently—13,788—that's almost as many votes as he got—to 2,341. I think this is a remarkable argument. I don't think all of these people could have—possibly have changed their minds in this time. And if they have, they certainly—we certainly ought to be able—we should have the right—we should have the duty I maintain—to find out, to give them the opportunity. There's nothing dearer than such an opportunity to vote. I have a feeling that never should the Legislature or a convention override an expressed plebiscite where such a tremendous majority was adduced. I thank you, Mr. Chairman, for your patience.

**CHAIRMAN NUTTING:** The question is on whether we shall place on the ballot an alternative proposal. I want to have the discussion as pertinent as possible.

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President—Mr. Chairman, would Mr. Romney yield to one question which he'll, I hope, answer shortly?

**CHAIRMAN NUTTING:** Mr. Romney, will you yield?

**DELEGATE ROMNEY:** I will endeavor.

**DELEGATE BLAYLOCK:** Mr. Romney. You went through the list of all the counties and you said what the votes were, and they were all in the majority for putting in the antidiversion amendment. How much money was spent by the Petroleum Association, the Automobile Dealers Association and all of the various interest groups on that campaign for a yes vote?

**DELEGATE ROMNEY:** Mr. Blaylock, I cannot answer that because I do not know. However, I was in the newspaper business at that time, as I am now, and I remember the campaign very well, and I remember the outrage of the people, which engendered such a vote.

**DELEGATE BLAYLOCK:** Mr. Chairman, I would just like to make a few points.

**CHAIRMAN NUTTING:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** I think Mrs. Robinson's point was very good—that if these are one-issue voters, why should they come out and vote for the Constitution if we just put in one of these watered-down versions. I'd like to also remind you people that the Revenue and Finance Committee, which we all had confidence in and which we supported right down through their report, recommended that we go for this proposition, and we supported them. I think, also, that we have to remember Marshall McCluen's statement that the medium is the message, and the medium will be bought up by these interest groups and you will hear nothing but to vote for what they want. Who's going to put up the money for the other side, for the side that, really, the majority supported in this Convention the first time? The money isn't there, because they don't have it. So, I would say to this Convention, at this time, if we want to change our minds, let's not put this thing on the ballot. Let's go ahead and strip this three-fifths out of here, because that's what's going to happen in the final analysis anyhow. We, the—just the plain people, have no chance against these interest groups. So let's stop wasting time, if that's the decision of this Convention; strip it out now and put it into the Constitution minus the three-fifths proposition. So far as people voting for things, I think that, probably, we should remember that Montana voted for prohibition once. We found out we got awfully dry before we changed that. So let's not think that we can't change—we made a mistake before, Miles, and maybe we should change our mind now.

**CHAIRMAN NUTTING:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman. I can't quite remember all of Delegate Romney's figures, but one figure does stick in my mind from our group. We were told that $2 million were expended on the issue of nondiversion of funds in 1956. That might help Mr. Blaylock some—$2 million. I rise in support of Mr. Felt's motion but for different reasons than for which he made it. I hope that we vote a resounding No on his motion and thus kill debate. We don't have one proposal before us. I think we probably have a proposal on every desk; on at least one desk, there are three different proposals. The whole thrust of these proposals are, in effect—they have to do with the three-fifths vote. We have not diverted any money in the majority proposal, which was overwhelmingly accepted a couple of weeks ago; we have permitted diversion on a three-fifths vote of the Legislature. And I would suggest to this body, in spite of what you've been told, that the Legislatures and legislators are a responsible body. They are not going to go out and rape this fund for some other purpose. All of the other proposals that were accepted in the majority report have been, as a matter of fact, accepted in all of the modified proposals. The only real issue here is the three-fifths vote. If the Legislature did, as a matter of fact, divert that money, I assume that most of them would earn themselves a long vacation from these halls, because I don't think the public would stand for it. We have not diverted money. As a matter of fact, I was hoping that, when we first started discussing this, that we'd drop the whole term "diversion" or "nondiversion" and just call it "highway revenue". But I would repeat for the body once again, there has been no diversion. Now, if you want to argue about the $2 million from the very top that we talked about the other day, that has been accepted in every other counterproposal that has been put before this body, and up till now it's been rejected; and I hope that you would continue to reject them today by voting down Mr. Felt's proposal. Thank you.

**CHAIRMAN NUTTING:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, I rise to resist Mr. Felt's motion. I have very strong feelings about the appropriateness of the anti-diversion 1-B in the Constitution, and I won't burden you with my feelings. However, I think that if Mr. Felt's motion does prevail and we are then in the position of deciding that we're going to put an alternative on the side for the voters to accept or reject, that we have a great obligation to be sure that the voters have a comparable choice. That is, I don't think that the proposed modified 1-B is a fair choice to make in the alternative to the Revenue and Finance proposed Section 6. There are many things about them which are not comparable, and I think you put the voter in an impossible position, because he may like part of one and like part of the other, and then what's he going to do? So I urge you, if you do sustain Mr. Felt's motion to put this on the side, that we give a great deal of thought to the way it is presented so that the voter is not put in a—to a disadvantage when it comes time for him to vote. Thank you.

**CHAIRMAN NUTTING:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. I'd like to speak against Mr. Felt's motion. It's a very fine motion, because I think it's going to clear the air for us and we'll get down to the decision of whether or not we're going to put an alternative on the ballot or not. And I hope that we are not going to put an alternative on the ballot, because the amendment—or rather the section that has been presented to us is, itself, a compromise solution to the problem. We've already considered putting two other items on the constitutional ballot at this point, the capital punishment issue and the issue of the two Legislative Assemblies. Are we going, then, to put a third on? And are we then going to put on a fourth, with the lotteries? If we are, I think we ought to put aid to parochial schools on. I think we ought to have about six alternatives on the ballot. If we begin now to set this kind of precedent, we're going to have a ballot that's about a mile wide and a half mile long. This isn't constitution writing, I think, when we get down to this sort of thing. This section, obviously, is a statutory thing in the first place, and I can't see any point in our dodging the issue here. We're here to write a constitution. Let's put it in the form that we want it in, and let's submit it to the voters that way. If we do vote to approve this motion of Mr. Felt's, we're going to have about eight or ten different proposals, because we're going to have to reconcile them all. It's going to take us all day to do that. And I think that we've been through this debate enough that we don't want to go through it again. So let's defeat this motion, and let's get on with the Style and Drafting report.

**CHAIRMAN NUTTING:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, fellow delegates. This issue is one I've been attempting to follow. I wasn't on the committee, but I've been attempting to follow it right along. I was inclined to go along with one of the delegates on the committee that I talked to that wanted to strike the entire article of diversion out of the Constitution. But the committee, I'm sure, considered the practicality of the politics involved and arrived at what I consider a compromise. That is that if things get so bad with this highway fund that it has to be diverted, that three-fifths of the Legislature can do it. And I submit that would take a very, very compelling circumstance to have the Legislature—three-fifths of the Legislature join together to take it away. What you've done here is to degrade a fund—and it's been growing every year. Now, if I—the figures I have—which I've received from Mr. Furlong—are accurate, it's grown 9 million last year, up to the point where it's 38 billion—million dollars annually. Now, we can expect it'll continue to grow. Now, when you give all of that sum to one department to use, nobody else can use it, they don't just use the part that is necessary and send it back for the rest of the state to live on. We all know what short resources the rest of the state is being run on. We have one department over there that we all know is pretty fat right now, it's likely to get fatter. And before they send back a dime, they'll have everybody in the organization driving a gold-plated Cadillac, because they don't send money back. That's the history of any organization. Bureaucracy will use all the money it can get. Now, sensibly, the committee has foreseen that it can come to this, where they don't use their money for highways or where the highways will be fully completed to where they don't need it any more, and we'll need this revenue. And the State of Montana is right at the point where we're going to have to get some revenue somewhere. And if we don't have some of this coming back from the Highway when they don't need it, we very likely might find—have put the Legislature in the position where they're going to enact a sales tax. Now, what Reverend Harbaugh said is completely accurate—the more of these side issues we put on the ballot, the greater the chance we have of the Constitution falling under it's own weight. The history that I've heard of the states where they put many side issues on the ballot—every side issue tends to defeat the ballot and, by itself, just having additional side issues can do so. What Mrs. Robinson said is also very true. I many times have risen here to talk about practical politics. Mrs. Robinson and I agreed every time on practical politics, and I'm glad to hear her talking politics. Because what they're doing here is what we call, in Butte, "double-shooting the turn". We're giving them two shots at the Constitution. They're not going to vote for the Constitution if there's a chance they're going to lose their precious revenue; they're going to vote No on the Constitution. And then you put this on the side, thinking you're going to avert this. You're just giving them a second chance to vote No; you're double-shooting the turn". Now, like Mr. Brown says, hundreds and thousands of citizens are worried. Well, Mr. Brown may have heard from hundreds and thousands of citizens, but I haven't heard one word. But I heard a lot from dealers; I heard a lot from truckers; I heard a lot from highway groups. Those are the people that are putting the pressure on. And I say the committee has given them every break. If many of us in this Convention had had our way, there would be nothing in here about any diversion. The tax money would be put in here where it could be used for the welfare, where it could be used for the other things we need revenue on. But they've kept their revenue sacred, and it's going to take three-fifths of the Legislature to take it out. But if we bend further, we give 'em—we fall into two chances—one, this Constitution will fall under its own weight because it's got too many side issues, and the other is they're just going to double-shoot the turn on us and both—vote No both ways. So I suggest that Mr. Felt's amendment should be defeated and we should sustain the committee.

**CHAIRMAN NUTTING:** Mr. Scanlin, you'll be next, but we have to change the tape up here so if you'll be at ease for a moment.

(Tape changed)

**CHAIRMAN NUTTING:** Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman, may I make an announcement while they are changing the tape?

**CHAIRMAN NUTTING:** If we can have your attention, Mr. Campbell will make an announcement while we're at ease.

**DELEGATE CAMPBELL:** As you know, this evening at 8 o'clock, Miss Jeannette Rankin will be speaking to us. One of the things she will be speaking to is a new proposal that Senator Mansfield and Achen have also discussed in the press recently—that is, a national presidential primary. And what she'd like to do, as part of her speech tonight, have us cooperate by filling out our preferences on 10 presidential candidates who are listed on this sheet that will be given to you. And if you could do this before noon and then pass them to the center of the aisle, she will tabulate them and tell you the results of how this would come out if this worked on a national level. So we'd certainly appreciate you taking the time. And on the ballot you have 10 candidates, and then you mark which one you'd rather have as President, all the way down from 1 to 10. Ignore the last one—11—it shouldn't have been on there—somebody lost out in New Hampshire. But if you would do this, we'd certainly appreciate it. Thank you very much.

**CHAIRMAN NUTTING:** The house will be in order.

Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, a clarification of the issue. If I understood correctly, the Chair just made a statement that what we were voting on in Mr. Felt's amendment was to—whether or not we should place it on the ballot, and, as I understood, Mr. Felt's amendment was that—it was to debate whether or not we were going to put it on the ballot, and that's what we've been doing for the last hour.

**CHAIRMAN NUTTING:** That's correct, Mr. Scanlin. The question is whether we shall debate it, and I think it has been debated pretty well.

Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. As I think most of you know, I have felt very strongly about this highway anti-diversion amendment. I have felt very strongly that it does not belong—in any manner, way, shape or form—in the Constitution, and I think that most people that really look at it carefully agree with this general position. I was perfectly willing to go along with the committee. They heard all the testimony; they heard both sides of the issue. They worked hard on it, and they came up with, indeed, a compromise. When we first discussed the question during the debate, initially—my recollection isn't perfect—but it seems to me there were about 16 people in this body that voted in favor of retention of the present section. And after a good number of hours, we got down to the point that we, in fact, voted that we did not want to place it on the ballot. I really don't know what has transpired in the meantime. There certainly has not been a ground swell of voter concern from the people of the State of Montana. I, like Delegate Holland from Butte, have received no mail from citizens on this question—no one that's concerned because, in fact, we've compromised one way or the other. I think that the people of Montana are satisfied with the position that we've taken, and I certainly see no reason to go back over this ground again and stir up the thing and present an alternative on the ballot on this question which not only doesn't belong on the ballot, but it doesn't belong in the Constitution at all. Delegate Romney went through a very extensive and well-documented course on the voting history. I could present the same course of votes that have been taken on questions such as justice of the peace, questions such as whether there should be three amendments, six amendments to the Constitution, and I think that this is really academic. The question really is whether we're going to present a constitution that the people, after they read it all, are going to be willing to accept. There are going to be things in there that every individual, personally, is not going to be particularly enchanted with—there are things in there that I'm certainly not particularly enchanted with—but I submit that there are going to be things that they know and recognize as major improvements. And this is going to be the question of whether they're going to vote for the Constitution or against it. The voters of the state are going to have to consider all aspects and not just the aspects of what the highway users and Mr. Jack Rehberg say about it. They're going to have to consider the whole question. And I feel it's important that we stick with reason, and I submit that the committee presented a very reasonable proposal. We voted in favor of it. And to submit this complicating issue on the ballot and to get a lot of money being spent to support a particular amendment is only going to confuse the voters. And I have faith in the voters of Montana. I think they're really quite well-informed, and I think that after we get through in our own districts, they'll be much better informed. The majority of this body does not support antidiversion, and I don't see any reason why we should submit it to the people for them to have to make a decision on this particular issue in the clouds of campaigns and a lot of money being spent. I submit we have a good proposal at the present time, and let's leave it that way. And let's defeat the motion of my good friend, Delegate Felt, and get on with more important issues. Thank you, Mr. Chairman and fellow delegates.

**CHAIRMAN NUTTING:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. Chairman, I rise in opposition to Delegate Felt's motion. I think we're missing one point here, though, in all of this argument. I keep hearing the statement that the Legislature has no control over the Highway Department, that it's a creature set out by itself with absolute—it controls itself and does as it pleases. I wonder how many of you have ever stopped to think about the fact that practically all of your highway proposals are presented through some budget system through the Legislature, with—probably as much as 5 years ahead of time—and that the Legislature, in its wisdom, has control entirely by setting the amount of gasoline tax that is put on to pay for the anticipated future highway construction. If the Legislature wants to control the Highway Department, all they have to do is start reducing the gasoline tax and other taxes that support it; they've got absolute control. I heard the argument here on the floor yesterday that the University System could be controlled by the Legislature because it appropriated the funds. Well, the Legislature doesn't exactly appropriate the funds to the Highway Department, but it does set the amount of gasoline tax that you pay in order to provide those funds, so I don't know why they don't have some control.

**CHAIRMAN NUTTING:** Mr. Felt, do you want to close?

Mr. Drum.

**DELEGATE DRUM:** Mr. Chairman. Our committee—the Revenue and Finance Committee hasn't said much this morning, but I would like to pass on some of the considerations that we had in placing this section into our article. When you talk about conversation and talk about muscle and talk about phone calls and talk about a lot of things, I'll tell you the committee is really quite familiar with the many feelings of people in transportation, the different motor carriers and motor groups of all kinds. And I think, in defense of the committee, we gave very fair consideration to all of the arguments, but we really felt that what was in the best interests of the people of Montana was to put a line into our section which gives the final responsibility and authority to the Legislature. And this, I think, is what we're debating this morning. Nobody's talking much about it, but we felt, after hearing the abundance of testimony, that the Highway Department would become more responsive to the will and the needs of the people of Montana and to the Legislature if they had this one line added to our—to this particular section. Now, we feel that there is an alternative in this one line. If what the advocates and exponents of eliminating any chance of this money—any diversion of this money, if what they say is true, they have nothing to worry about. The Legislature is going to support them, we feel, in every way that they can. But if the Highway Department, number 1, accumulates a lot of money in the next 20 years—and we're talking about roughly two and a half to three million dollars a year that this fund is growing—instead of talking about $38 million, Mr. Holland, we may be talking about, 20 years from today, $98 million—and if there is no possibility of diverting that money, it may really become cumberson to the legislative body and it may be something that is not in the best interests of the people of Montana. Now we've had phone calls—I've had them early in the morning and late at night—and when I explain the committee's position to these people, it—usually they say, "Fine, we thought—our understanding of this thing is that you weren't going to spend any money on county roads, there was no money going to city streets." And, really, in my mind—and I'm certain in the minds of our committee—more money is going to be available for county roads, more money is going to be available for city streets the way this section is written. As far as the arithmetic on the money, there's very little change as to the relocation of these moneys. As Mr. McDonough said, the license tax money is statutory now and will continue to be so. But from the best interests of the people of Montana, I urge you to defeat Mr. Felt's amendment and to leave this section as it is given to—given as a choice to the people of Montana. Thank you, Mr. Chairman.

**CHAIRMAN NUTTING:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman, I don't think you've heard much from the committee, because I think they—you heard from them a week, 10 days ago, and I don't think there's been much change. I think, if you noticed the votes this morning, we're probably still voting about the same way, at least more than even—the majority of us. So that's why you haven't heard a great deal from the committee.

**CHAIRMAN NUTTING:** Mr. Rollins.

**DELEGATE ROLLINS:** Mr. Chairman. Somewhere in the far distance, out past one of those tepees on that painting, I anticipate reaching a point where there can be a final vote on this subject. These old, dry bones have come up now for about the seventh time, and each time, I've struck with great valor to try to put them in their final resting place. Now, Mr. Felt gives me another chance, and I appreciate the favor, because this gives me about the eighth blow now. I intend to vote against this measure and hope that the matter can be put to rest.

**CHAIRMAN NUTTING:** Mr. Skari.

**DELEGATE SKARI:** Mr. Chairman, I resist the motion in giving a choice on this. I think it's going to be confusing for the voters to make this decision. When they go into the polling booth, they're going to weigh these fractions here regarding a legislative vote, how effective a three-fifths vote is and this sort of thing. I think we really should decide this one way or the other. It seems to me we have several choices, though, other than this. We can leave it the way we have it, we can—I suppose we could put back in 1-B, or possibly we could raise the fraction here. Mr. Romney's remarks are somewhat pertinent. He gave some statistics on the vote in 19—15 years ago. However, we also have to remember, as someone pointed out, that voters do change their minds—that 15,000 people voted, in 1889, for this Constitution and 4,000 against—something like four to one—and 80 years later, we had a two-to-one vote asking that it be revised. It seems to me we want some options left open here in the event that more funds are received, as Mr. Drum said, than are necessary for sensible road construction. We also want some—I think it's the feeling of this body that we want a certain amount of responsiveness from the Highway Department. However, there are many areas in this state where we do need roads yet. We are—our roads aren't finished out in the eastern part of the state and, I presume, in a lot of parts of the state. I would—I don't know—I don't think a substitute motion is in order, but I would suggest that we might consider raising the fraction to two-thirds.

**CHAIRMAN NUTTING:** A substitute motion is not in order at this time, Mr. Skari.

**DELEGATE SKARI:** Thank you, Mr. President.

**CHAIRMAN NUTTING:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. Chairman. I'd just like to announce that I misunderstood Mr. Felt's motion, and I am in favor of it rather than opposed to it.

**CHAIRMAN NUTTING:** Mr. Graybill.

**DELEGATE GRAYBILL:** Mr. Chairman, members of the Convention. I will not—I rise in opposition to Mr. Felt's motion, and I have only two small points. First of all, as an answer to Mr. Romney, there is a simple solution to Mr. Romney's problem. We have an antidiversion amendment in the present Constitution. The committee has provided us with an antidiversion amendment. It simply has a three-fifths lever on it in case the Highway Department gets out of hand. So, anybody that's for the antidiversion amendment should be for the present committee's proposal. Secondly, I rise in opposition to Mr. Felt's motion because Mr. Felt's motion—if you vote Yes, it requires you to accept the proposition that we'll put something on the ballot, and we haven't any idea of what it's going to be yet. And you can tell by papers rustling here that there are a lot of chances, and I'm sure none of us would agree to all of them. So you're voting for a pig in a poke. I hope you'll defeat the Felt amendment. Thank you.

**CHAIRMAN NUTTING:** Mr. Felt, do you want to close?

**DELEGATE FELT:** Mr. Chairman. I'm delighted to close. I think everyone will be glad to get on with this matter. I do not feel that I can answer all of the different points that have been brought up, but I want to discuss some of them. I feel, first of all, that regardless of how we acted when the committee report came before us, that the votes that we've cast here this morning to suspend the rules and to reconsider the question indicate a general feeling that something, in addition, should be either done or at least seriously considered. But I was not certain that there was enough agreement amongst those of that persuasion that they could immediately agree upon just what that additional matter might be. I want to express, again, my complete support for the committee proposal and to state that if my motion fails and the committee proposal then remains just as it is—intact, I intend to spend most of my time in working on this matter when it comes before the people, trying to support what the committee has proposed. Because I like it very, very much, and I think it took a lot of courage. I know they must have received a great deal of pressure to go either one way or the other, and they adopted a sensible compromise. However, if this compromise that I consider sensible would, in fact, not be found to be quite palatable enough and would cause many people to vote against the entire Constitution, then I feel it is time that we make some further effort to arrive at a compromise program which is even more palatable and which could lead to a successful vote on the entire Constitution and a successful solution to this particular antidiversion problem. The committee's proposal, by—for all the reasons given for—by different delegates—most recently, I think, by Delegate Drum—is very commendable, much improved over the present antidiversion thing that we have in our present Constitution. But I do not feel as discouraged as some delegates—such as Delegate Blaylock felt—that we have no chance of convincing the people to go along with what we and our committee felt was right. I think we do have a chance and that, if there is some organized support for the premise that these funds should not be diverted as they have been in recent years, that we have a chance to succeed even against the bogeymen that have been waved at us—as the people who will either defeat the whole Constitution or they would defeat the proposal—the part of the proposal which would give the Legislature discretionary power to override by a three-fifths vote. I wish that things were simple, many times myself, but they aren't simple, and we have to find our way through a rather confusing maze of influences and counter-influences to arrive at something. I wish to take at least minor exception to the final point raised by Delegate Graybill, too. We are not buying a pig in a poke when—if we vote for this. You're simply saying you're willing to take a look at the pigs and see if they find one that you might like; but we're not buying anything. And if it turns out that we don't find a single one that we like, then, of course, we're back with the present committee proposal and the Convention can go on about its business. But—and, of course, we hate to take the time to go into these alternatives, but for something as important to us as the handling of our highway program and the part that the Legislature can play in that, and just how we're going to handle it—the problems of giving some aid to the cities and counties with their road programs, things that I assure you we have struggled with because we were tied down by this present antidiversion. And we have probably done some things that are of questionable constitutional validity in an effort to circumvent the tightness of the present antidiversion amendment. All of these things do need, I feel, to be considered by all the members of this Convention—and that we can, I hope, find an alternative. For my own personal preference, if there's a favorable vote on my motion, I would then strongly support the alternative offered by Delegate Eck to place this alternative on the ballot. And I could then support the alternative on the ballot, because it would give the Legislature the power, by a three-fifths vote, to override the antidiversion principle. On the other hand, if it turns out—and this is why this thing gets confusing—if it turned out that her proposal failed, I would support the proposal made by Delegate Brown to put that alternative on the ballot. But then, when I went out before the people, I would oppose his alternate proposal and try to convince them that they should stay with the committee report as the best of the two alternatives. So this is kind of hard to follow. But I do believe that we have a chance with the people, as well as in this Convention, that the best possible compromise on this whole matter would be approved by the people and that we would have, then, a flexible constitution dealing with this entire matter and one where we would get very fine results. I thank you.

**CHAIRMAN NUTTING:** Mr. Furlong, for what reason do you rise?

**DELEGATE FURLONG:** Mr. Chairman. I ask for a roll call vote, and I wonder if the Chair would explain the effect of a Yes on the Felt amendment.

**CHAIRMAN NUTTING:** Yes, I'll be happy to. Do we have sufficient seconds for a roll call vote? Sufficient seconds being—we—a roll call been asked. Now, the question arises on the substitute motion by Mr. Felt that the Convention will debate the question of placing on the ballot an alternative proposal on the matters embraced in Section 6, Revenue and Finance. Now, what this means is that a Yes vote means that we will consider different alternatives; a No vote will mean that the matter is closed, because the motion to reconsider was only to offer an alternative. So, therefore, if we vote No on this motion, it will mean that then there will be no more reconsideration on this matter. Is that clear? Are there any questions?

(No response)

**CHAIRMAN NUTTING:** As many as are in favor of the motion by Mr. Felt, vote Aye; as many as are opposed, vote No. Has everybody voted?

(No response)

**CHAIRMAN NUTTING:** Does anyone wish to change their vote?

(No response)

**CHAIRMAN NUTTING:** The vote is closed.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Absent |
| Dahood | Aye |
| Davis | Excused |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |

| | |
|---|---|
| Noble | Absent |
| Nutting | Absent |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Aye |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CHAIRMAN NUTTING:** The clerk will announce the vote.

**CLERK HANSON:** Mr. Chairman, 31 delegates voting Aye, 65 voting No.

**CHAIRMAN NUTTING:** 31 having voted Aye, 65 voting No, the motion fails and the matter is closed.

(Committee of the Whole chairmanship resumed by Mr. Graybill)

**CHAIRMAN GRAYBILL:** Ladies and gentlemen of the committee, there's a small matter on Section 6 to be completed.

And, Mr. Kelleher, do you want to explain your problem and—?

**DELEGATE KELLEHER:** Mr. Chairman. I discussed the matter with the Chairman of the Revenue and Finance Committee and also my own Chairman, Mr. Schiltz. And Mr. Schiltz has agreed to discuss the matter.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, members of the committee. If you'll refer to Section 6 as redrafted, you will find, on page 6, line 9—or subsection C, in any case—where we provide—and you have to go back to the beginning and say that "these various funds shall be used solely for"—and then we list A, B and C. Now, under C, as restyled and I think as originally stated, but I could be wrong—in any case, this is substantive if it is this way. As restyled we say that the highway safety, driver education, tourist promotion and administrative collection costs can be spent from these funds if authorized by the Legislature. Now, there's a question whether or not that "authorized by the Legislature" pertains only to subsection C or whether it should pertain to all—A, B and C. From the language we had to work with, the committee decided that "as authorized by the Legislature"—Now, if you look back at the original language that we worked with on pages 21, 2—page 5, lines 21, 2 and 3, you can see why we did as we did. Now, it's a very simple problem—either the Legislature authorizes only that one category or the Legislature must authorize all of those various types of expenditures. And we leave it to the committee to tell us which way. Now, if it's to modify all those various types of expenditures, we can go to page 5—it'll be a little cumbersome, but—on line 30, after the word "used", we can put in there—it'll be two parentheticals,—but anyway, we can put in there "as authorized by the Legislature", after the word "used", and then continue on and then on line 9 strike "authorized by the Legislature". I just pose the problem for you to solve.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** Well, the thinking of the committee, at least, was that the payment of county-city-town obligations on streets, roads and bridges was to be authorized by the Legislature. I'm not sure that that first one went in there, so I'll probably have to turn that over to our counsel, McDonough, but I know that our thinking on payment of county-city-town obligations on streets, roads and bridges—We specifically put that in because they were circumventing that now to give that cent [sic], and we wanted to make that legal. And I would ask Mr. McDonough if he would yield to—as—whether or not that section A should be included in the same. I don't know, myself.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** I think to be consistent, Mr. President, it has to be included in—within it.

**CHAIRMAN GRAYBILL:** Then, Mr. McDonough, is it your proposal that we should move the term "authorized by the Legislature" back on page 5 to modify all three? Is that your suggestion?

**DELEGATE McDONOUGH:** Yes, sir.

**CHAIRMAN GRAYBILL:** All right. Now, to do that, I think a motion must be made to reconsider Section 6.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after—No, I move that we reconsider the action taken previously this morning on Section 6. And inasmuch as I didn't vote at all, I can be said to have voted on the prevailing side.

**CHAIRMAN GRAYBILL:** Well, it was a voice vote, so we'll assume you voted on the prevailing side. A motion has been made by Mr. Schiltz to reconsider Section 6 for the purpose of making this—putting to the Convention this change. So many—is there discussion?

(No response)

**CHAIRMAN GRAYBILL:** So many as are in favor of Mr. Schiltz's motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** All right. Mr. Schiltz, do you want to make your motion?

**DELEGATE SCHILTZ:** Mr. Chairman. I move that Section 6, sub. 1, be amended by inserting after the word "used", on line 30, page 5, and its comparable line and page in the other material, "as authorized by the Legislature" and that Section 6, sub. 1, sub. C be further amended on line 9, page 6, and its comparable page and line, by striking the words "authorized by the Legislature".

**CHAIRMAN GRAYBILL:** Very well. The sense of Mr. Schiltz's amendment, then, is on line 30, page 5, after the word "used comma", put in the phrase "as authorized by the Legislature"; and then strike the words on page 6, line 9, "authorized by the Legislature" and put a period after "costs". That makes Section 1 read: "Revenue from gross vehicle weights, fees, excises and license tax except" so—and so forth, "on gasoline, fuel and other energy sources", and so forth, "shall be used as authorized by the Legislature after deduction of statutory refunds and adjustments solely for A, B and C." Is there discussion?

(No response)

**CHAIRMAN GRAYBILL:** So many as shall be in favor of that amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as shall be opposed, say No.

(No response)

**CHAIRMAN GRAYBILL:** Very well. It's adopted as amended.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Do you want to move the whole section now?

**DELEGATE SCHILTZ:** Right. I move that when this committee does arise and report, after having had under consideration Section 6, Style and Drafting—sub. 1, Style and Drafting Report Number 7, that it recommend that the same be adopted as amended.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as shall be opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** All right. The Ayes have it, and it's adopted as amended. Mr. Schiltz, the Chair thinks that we should stop and get started with Section 7 after lunch.

**DELEGATE SCHILTZ:** We haven't done subsection 2.

**CHAIRMAN GRAYBILL:** Oh, all right. Subsection 2. Do you want to move it?

**DELEGATE SCHILTZ:** Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 6, subsection 2, Style and Drafting Report Number 7, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE SCHILTZ:** We simply made a subsection 2 out of this. It was all run together in the material that came from the floor, and we think it reads better.

**CHAIRMAN GRAYBILL:** Any discussion?
(No response)

**CHAIRMAN GRAYBILL:** So many as shall be in favor of subsection 2, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Very well.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. Before we recess, I'd like to have you recognize Bob Camel for an announcement.

**CHAIRMAN GRAYBILL:** Bob, did you make your announcement?

**MR. CAMEL:** I'd just like to remind you to fill out the presidential preference things and send them to the center aisle. If you don't participate within the system, there's a real chance Shirley Chisholm might be the next President. So, do write them out, please. Thank you.

**CHAIRMAN GRAYBILL:** I'd like to call the attention to all delegates—of all delegates to the announcement that's been placed on your desks—namely, that the Columbians will perform in the rotunda this noon—and that's one reason I want to stop promptly at noon. So if you want to hear a little band concert, go down there—listen on the rotunda. Other announcements?
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move we recess until 1:15 this day.

**CHAIRMAN GRAYBILL:** The motion is to recess until 1:15 today. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** The committee is in recess.

(Convention recessed at 12:07 p.m.—reconvened at 1:25 p.m.)

**CHAIRMAN GRAYBILL:** The committee will be in order. Members of the committee, before lunch we had completed Section 6 of Style and Drafting on Revenue and Finance, and we're on Section 7. Will the clerk please read Section 7.

**CLERK HANSON:** "Section 7. Tax appeals." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 7, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, we rearranged the language some for style. We struck out "county or local government unit" at the bottom. I think that's all. Instead of—we put in "local government unit"—oh, no, that was already in there. We took out "county or"—we took out "county"—oh, I see—just to comply with other definitions in the rest of the Constitution, using "local government unit", which would include "county".

**CHAIRMAN GRAYBILL:** Is there discussion of Section 7?
(No response)

**CHAIRMAN GRAYBILL:** Very well, all in favor of Section 7, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted. Section 8.

**CLERK HANSON:** "Section 8. State debt." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 8, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, some rearrangement for style. No substantive changes; nothing significant that should be called to the attention of the committee.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 8?

(No response)

**CHAIRMAN GRAYBILL:** Very well, all in favor of Section 8, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** Section 8 is adopted. Section 9.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 9, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, a very minor change—changed "Legislative Assembly" to "Legislature", dropped the words "during any budget period" as not necessary.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 9?

(No response)

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 10.

**CLERK HANSON:** "Section 10. Local government debt." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 10, Style and Drafting Report Number 7, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** We changed the title slightly. We took this—the changes here—up with the substantive committee and agreed that "subdivisions and districts of the state" did not fit the intent, so we supplied the words "and all other local governmental entities". Now, there's some judicial interpretation, not necessarily in the State of Montana, but other places, that qualifies the term "all other local government entities" for what the committee's intent was. The committee concurred in this change. We—you'll see we would have some trouble with "for subdivisions and districts of the state" as being rather imprecise.

**CHAIRMAN GRAYBILL:** Is there any discussion of Section 10?

**DELEGATE SCHILTZ:** Oh, there is a word "of" that appears to have been struck in this. When you run into those, if—before you run to me, look back on the clean copy, the unstruck out and amended copy; frequently you will find that we have taken care of it, but this is just a slip here.

**CHAIRMAN GRAYBILL:** Where does the "of" go?

**DELEGATE SCHILTZ:** Well, I don't know. Somebody talked to me about it sometime.

**CHAIRMAN GRAYBILL:** The first "of" in line 2 should be still in there. Is that your point?

**DELEGATE SCHILTZ:** That's right, and it's okay over on page 3 or 2 or somewhere.

**CHAIRMAN GRAYBILL:** "The Legislature shall by law—" I don't understand, Mr. Schiltz.

**DELEGATE SCHILTZ:** Well, if you'll look on page 3, Mr. Chairman—

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE SCHILTZ:** It reads—on line 4, it reads, "the Legislature shall by law limit debts of counties, cities, towns, and all other local governmental units", and I don't think it quite reads that way on page 7.

**CHAIRMAN GRAYBILL:** All right, the "s" should be off of "limits".

**DELEGATE SCHILTZ:** Well, it's struck, but it so nearly approximates the cross on the "s" that—

**CHAIRMAN GRAYBILL:** I see. "The Legislature shall by law limit debts of"—and then we need the "of".

**DELEGATE SCHILTZ:** Then the "of" is in there, right.

**CHAIRMAN GRAYBILL:** Okay. Is there any more discussion of Section 10?

(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 10, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 11.

**CLERK HANSON:** "Section 11. Use of loan proceeds." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 11, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, we again used "all other local governmental entities", and we did that throughout the next two sections—11, 12 and 13—and so I won't call attention to them hereafter. Otherwise, only style.

**CHAIRMAN GRAYBILL:** Any discussion?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 11, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 12.

**CLERK HANSON:** "Section 12. Strict accountability." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 12, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, only style changes.

**CHAIRMAN GRAYBILL:** Discussion on Section 12?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Section 12, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 13.

**CLERK HANSON:** "Section 13. Investment of public funds." Mr. Chairman.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 13, Style and Drafting Report Number 7, it recommend the same be adopted. Mr. Chairman, only style changes, plus the "local governmental entities" language.

**CHAIRMAN GRAYBILL:** Very well, Section 13. Any discussion?
Mr. Barnard.

**DELEGATE BARNARD:** Mr. President, either I've lost something or missed something in the report of the Revenue and Finance, but we made an amendment to it and included a limitation on the investment of the school trust funds, and so far I haven't been able to find it. It should be on Section 13—under Section 13, I believe, and so far I haven't located it. Maybe I've missed it someplace.

**DELEGATE SCHILTZ:** Well, Mr. Chairman, Mr. Woodmansey just pointed out for me—I couldn't find it earlier—on line 26 it says, "No public funds shall be invested in private corporate capital stock". Is that the question you have, Mr. Barnard?

**DELEGATE BARNARD:** No, the question is—we put a limitation on the investment of the trust funds, such as securities of the United States and securities of the various towns and the State of Montana and the school districts—the schools—and it was a little different from the other one. It's a full section in itself.

**DELEGATE SCHILTZ:** Well, Mr. Chairman—

**CHAIRMAN GRAYBILL:** We added a subsection 2, which you don't seem to have, Mr. Schiltz.

**DELEGATE SCHILTZ:** Where is that, Mr. Chairman?

**CHAIRMAN GRAYBILL:** 13 has a subsection 2, which you don't seem to have.

**DELEGATE SCHILTZ:** Well, either we didn't get it from the journal or we missed it. I—perhaps—

**CHAIRMAN GRAYBILL:** I have it here and could read it to you. It says: "The public school fund shall remain forever inviolate and guaranteed against loss or diversion. The public school funds and the permanent funds of the State University and other university institutions, state institutions of learning shall be safely and conservatively invested in public securities of the state, its subdivisions, and"—something, something, something—"or in bonds of the United States" and so forth. This whole thing was the Barnard amendment, and we made it a subsection 2. So, I think probably what we need to do is refer this particular one back to Style and Drafting to pick up subsection 2 of Section 13.

**DELEGATE SCHILTZ:** Well, if we could approve the—I don't know if it needs any styling or not. I guess we'd better have it referred; and we'll refer it back, styled under Order of Business Number 5, as we've done previously, to save one printing, I think.

**CHAIRMAN GRAYBILL:** Right. Very well. Other than that, you're absolutely right, Mr. Barnard—and other than that, we've adopted this.

Mr. Schiltz, is there any reason that Natural Resources has to go back to you?

**DELEGATE SCHILTZ:** Is that Number 6 that we did this morning?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE SCHILTZ:** I think it does. We made some changes in there.

**CHAIRMAN GRAYBILL:** Very well, then, I would entertain a motion from you that Style and Drafting Reports Number 6 and 7 be referred to Style and Drafting for presentation—for preparation for Order of Business Number 5, so that you only print them for Order of Business Number 5—

**DELEGATE SCHILTZ:** (Inaudible)

**CHAIRMAN GRAYBILL:** —and then back to the Committee of the Whole for final consideration again. Okay?

**DELEGATE SCHILTZ:** That's fine. Thank you.

**CHAIRMAN GRAYBILL:** Does everyone understand the motion? We're going to send 6 and 7 back to Style and Drafting for printing for Order of Business Number 5, but they will pick up this Section 13, sub. 2, and any other changes they have. It will come here to the Committee of the Whole again for at least a moment before it goes to Order of Business Number 5. All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** So ordered. Very well, that's what we'll do.

Mr. Murray, do we need to rise and report on that? Or is that enough?

**DELEGATE MURRAY:** Mr. Chairman, I don't think that we need to do it at this time. I think we can—unless you want to get this back to Style so that you could have it on Order of Business Number 5 tomorrow sometime. Do you think that we will complete the work of Public Health, Welfare, today?

**CHAIRMAN GRAYBILL:** No, but tomorrow we'll want this on Order of Business Number 5.

**DELEGATE MURRAY:** Well, then, I think we should rise and finally report on this so that we get it out of here.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** First you'll have to come back to Committee of the Whole in order to include what Mr. Barnard has, so that we can adopt that—

**CHAIRMAN GRAYBILL:** Very well, I—

**DELEGATE ESKILDSEN:** —and then we can go to Order of Business Number 5 with it.

**CHAIRMAN GRAYBILL:** And we might have to waive the time.

**DELEGATE ESKILDSEN:** That's right.

**CHAIRMAN GRAYBILL:** All right, let's not do that. Members of the body, we will not rise and report this until they come back to us sometime tomorrow. Very well, then, it's the Chair's position that we're ready to go to Public Health, Welfare, Labor and Industry. Is that correct? Anybody have anything else before that?
(No response)

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you a proposed order of consideration of proposals in Public Health, Welfare, Labor and Industry, which we will attempt to follow, starting with nonmunicipal corporations on page 3 to 7, which is Sections 1 to 6, then moving to institutions and assistance, then to the labor majority and minority proposals.

Very well, Mr. Heliker, do you want an opening statement?

**DELEGATE HELIKER:** Very briefly, Mr. Chairman. The—I'd like to express publicly, to begin with, the appreciation of the committee for the unstinting labors of our research analyst, Dick Spall, who became a research analyst rather late in the game and worked under exceedingly difficult circumstances because he did not have the 6 months or more background that most of the research analysts did. He's done a tremendous job for the committee, and we owe him a great debt of gratitude. I'd also like to express the same general sentiments concerning the work of our interns, Candy Hauf and George Mahoney, and our secretary, Sylvia Kinsey. The separate proposals of the committee will be presented by separate members of the committee and the first one, on nonmunicipal corporations, by Mr. Ward, and I now yield the floor to Mr. Ward.

**CHAIRMAN GRAYBILL:** Mr. Ward—Before we start, will the clerk please read the title of the article and Section 1.

**CLERK HANSON:** "Public Health, Welfare, Labor and Industry Proposal Number 9, introduced February 19th, 1972; George B. Heliker, Chairman; J. Ward, Vice-chairman. Be it proposed by the Public Health, Welfare, Labor and Industry Committee: that there be a new article on the nonmunicipal corporations, to read as follows: 'Section 1. Grant of power. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.'" Mr. Chairman, Section 1.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 1 of Proposal 9, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, the corporation article has been deleted considerable. The old article on corporations had 20 sections, and at present we have it down to 6. During our hearings throughout the committee work, we had no one to testify for or against any particular portion of this article, so we had to start from scratch and through different state agencies, lawyers in the delegation and a few that I contacted in Missoula—I spent considerable time with them—one man has moved here from California—and so this is a basic part of our work. I'd also like to thank Mr. Mahoney and Mrs. Van Buskirk for their work on this article, which we were on the subcommittee of. This Article I is a special grant to charter—for corporate charters granted, modified and dissolved. It replaces Section 2 of the original section on—in the old Constitution, and it gives that general power.

**CHAIRMAN GRAYBILL:** Is there other discussion of Section 1?

(No response)

**CHAIRMAN GRAYBILL:** Very well, all in favor of Section 1 of the Nonmunicipal Corporations Act of the Public Health, Welfare, Labor and Industry proposal—all in favor of that Section 1, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Section 2, Mr. Clerk.

**CLERK HANSON:** "Section 2. Protection for citizenry. The Legislative Assembly shall provide for protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations." Mr. Chairman, Section 2.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 2 of Proposal 9, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** This is a new section; it combines some of the old ones together. It's rather broad, but it was felt by the committee that in the State of Montana we have some foreign corporations that do business here that is almost void from any control and also associations, individuals, that—out of state, that cause problems in Montana once in awhile. We also had two proposals for what we were—consumer protection proposals—and through a number of things, we tried to set up some type of program that the Legislature can direct towards harmful and unfair practices of either foreign or domestic corporations, individuals, or associations. So this can cover a multitude of things, and I think that's all I have to say for the present. I think there's an amendment to it, but I think it should be debated.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, would Mr. Ward yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Ward?

**DELEGATE WARD:** I yield.

**DELEGATE BLAYLOCK:** Mr. Ward, would you give us a specific example of, say, something that's going on now by a foreign corporation which this proposal would protect us against.

**DELEGATE WARD:** Well, the first thing that comes to my mind, some of the foreign corporations in real estate send out notices to people here and try to get you to buy either a square inch or a square foot of land in some of their area. This is one of the examples that was brought up in committee.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** I was just reading Sections 2, 3, 4 and 5 and 6, and actually, basically all it is is statutory law. I hate to bring that up again, but it is. I can see Section 1, possibly, so that a specific charter isn't granted to a special corporation; but 2, 3, 4 and 5 and 6 are actually statutory law. And we really do have a very good model business code act for profit corporations and another act that covers nonprofit corporations, and practically all of these things are included in those two acts, and I really don't see too much reason to include them in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen, You have an amendment up here. Do you want it moved, or are you waiting?

**DELEGATE JACOBSEN:** If this is the proper time, Mr. President, I would have the clerk read this amendment.

**CHAIRMAN GRAYBILL:** Well, it is to this section. Maybe we ought to get it out on the floor, and everybody can think about it. Will the clerk please read Mr. Jacobsen's amendment.

**CLERK HANSON:** "Mr. Chairman, I move to amend Section 2, page 3, by making Section 2 read 'Section 2, subsection 1. Protection for citizenry' and adding as a subsection 2 the following: 'Subsection 2. The Legislature shall provide for the State of Montana shall refrain from engaging in any monopolistic business. Any such existing monopoly must be dissolved by the Legislature in the first assembly after the adoption of this Constitution or by December 31, 1974. This section does not prevent the Legislature from regulating or taxing according to law.' Signed: Jacobsen and Johnson." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Johnson has proposed an amendment to add a subsection 2 to Section 2—making the present section subsection 1—the substance of which is to provide that the Legislature shall refrain from engaging in any monopolistic business and requiring that the Legislature dissolve any such monopolistic businesses as the state may now be in.

Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President—

**CHAIRMAN GRAYBILL:** First of all, may I ask if this is printed and on the desks?

**DELEGATE JACOBSEN:** Yes, it is.

**CHAIRMAN GRAYBILL:** Okay.

Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President, fellow delegates. I should state my own personal interest in this. I have no business, at present; I am retired. I have no interest, really, in the liquor business except that I believe that this type of business does not belong in our State of Montana, and we have this opportunity to get it out. Now, according to the annual Montana Liquor Control Board operating statement of 1969 and 1970, after paying expenses and including county licenses and taxes and other income, the total income was just in excess of $12 million. This includes state and county taxes and licenses on beer. I want to retain that net revenue for the State of Montana. I am not recommending any change in the licenses or beer tax on the—or the state or county liquor license taxes. However, I am recommending that the state get out of the liquor sales business from which, after paying in excess of $2,660,000 for expenses, the net income was $4,930,000. I would get this net income by a stamp tax, which would be collected by the distilleries as sales are made to private enterprise and then remitted to the State of Montana. There are many factors that have to be considered in determining the stamp cost to be collected by distilleries; however, as a simple illustration, let us assume that 10 million one-fifth gallon bottles of bourbon, gin and vodka were sold in Montana in the year 1970. No sales of wine or Scotch or other liquors are considered in this example. To raise the $4,930,000, it would simply be necessary for the distilleries to add 50 cents per bottle on this. This would raise $5 million. With competition among retailers for the sale of liquor, the result should be a lower cost to consumers in Montana. The balance sheet of the Liquor Board, as of June 30, 1970, showed an inventory of more than $4 million was in state retail stores and state warehouses. When the State of Montana is no longer involved in the sale of liquor, this $4 million of inventory would become $4 million in cash to be placed either in our general fund or distributed to the cities and towns of our state. This inventory, if carried by private enterprise, would be taxable under a personal property tax laws, as would the independent warehouses and retail buildings. Right at this moment, I'm going to ask the President if he would allow Torrey Johnson to make other remarks on this issue.

**CHAIRMAN GRAYBILL:** Mr. Johnson.

**DELEGATE JOHNSON:** Mr. President, thank you. Ladies and gentlemen, I do believe in a private enterprise—free enterprise in Montana and the right to engage in any competitive business. Now, an examination of a report of the Liquor Control Board was done by the Legislative Auditor for fiscal year ending June 30, 1969. This study disclosed many unbusinesslike activities of this state-controlled monopoly. All liquor stores in the State of Montana are regulated by the Liquor Control Board. This board has control over all sales of the liquor and the collection of the revenue. The law grants broad powers to this board, and its powers involve every aspect of controlling the sale of liquor. It is truly a monopolistic bureau. The duties of the board include both retail business powers, as well as governmental control functions. It stands to reason that a body in charge of prohibiting and deciding the sale of certain types of liquor, and also what types to sell, and hiring and discharging employees should not also be in charge of regulatory duties. Some of these regulatory duties include licensing retail liquor and beer dealers, licensing brewers and wholesalers, appointing inspectors to enforce the law, distributing the portion of the taxes to local government, and making regulations necessary to implement liquor laws. It stands to reason that if an agency sets up procedural rules for a business, that same body should not be allowed to set the governmental controls. Since the liquor business in Montana is a monopoly and prices are set by the Liquor Control Board, a large markup percentage has occurred. Domestic liquor is marked up sixty-five and a half percent and imported liquor is marked up eighty-nine and six-tenths percent. Wines are marked on a different scale, and the less-expensive wines are marked up 75 percent over cost and the more expensive wines are marked up 53 percent over cost. The only restriction on the board concerning markup is that there are no wholesale prices and reductions in price for purchases in quantity. So, you buy 20 cases, you don't get it any cheaper than if you buy one bottle, and that—in private dealers—in other states, why, you can always buy whiskey a little cheaper if you buy it in quantity. Now, the entire volume of liquor sales is handled by the Liquor Control Board, yet this board meets only 2 days, once each month. The net income of the liquor monopoly, including beer licenses and taxes, for the fiscal year 1969 was $10 million, that is. It seems that any group having supervisory and regulatory control over such a large amount of business would find it necessary to put forth much more time in order to adequately perform their duties. There is no procedure established for accurate minutes taken at the board's meetings. This has led to some discrepancy between what has actually occurred at the meetings and what has been reported. For example, inspection tours for board members are noted, as well as travel claims, but not the results of the inspections. One board member mentioned that he traveled to another state, but no mention of that trip was included in the records. In one instance, a board member was listed as being in attendance at a scheduled meeting and was credited for seconding a motion when, in fact, that member was absent from that meeting. The minutes reported that the hours of convening and adjourning were usually 9:00 a.m. and 5:00 p.m., when the actual adjournment time was well before 5:00 p.m. But that's all right; if they get their work done, I guess they can go home early, you know. Anyway, in a study of the Legislative Council, it was reported that, by any standards, the official minutes of the board are insufficient for a public agency which collects an annual gross revenue of many millions of dollars. The insufficiency and substandard method of record content of the board meetings were part of the observations in a December 1964 report. It is stipulated in Section 2-11(b) of the Board's rules and regulations that the Administrator shall sign all purchase orders. Several purchase orders were not signed by the Administrator, and in some cases additional items were placed on the order after the Administrator had signed it. All liquor is ordered through the central office in Helena. It's oftentimes difficult for the Purchasing Agent to know what the needs of each individual store happens to be, and the Purchasing Agent does not take into consideration the amount of inventory in stores when determining the quantity of merchandise to be ordered. This is just one example of the inefficiency involved when a central authority takes over functions which could be better handled by a private—on the local level and an independent businessman. Each individual liquor store is aware of its own requirements, naturally, and, if operating privately, could more efficiently allocate its own resources. The representatives of distilleries and wineries meet with these members of the Liquor Control Board during their regular monthly meetings, and this is the only time these representatives are allowed to conduct business in the State of Montana. They have to leave right away. I think they're only allowed 24 hours in the state—they're real fly-by-nights, you know. It is also during this time that the Board decides what liquors it will purchase, and some distillery representatives have exerted undue influence on some employees and officials at times which were not appropriate for the transaction of business. The employees of the Liquor Control Board cannot best serve Montana or maintain independence through association with representatives whose financial rewards depend on the purchase of certain liquors. Some liquor—imported liquors can be consigned directly to certain churches for sacramental use, and according to this legislative audit, they find that this privilege has been abused several times, and yet there has been no positive means of control established. One of the major unbusinesslike activities of the board is its policies on unsalable liquor. Approximately 31,000 bottles of liquor were suspended from inventory under the pretense of being unsalable or withdrawn by the distiller representative. The cost of this liquor was $72,482, while the potential retail value would have been a hundred and nineteen thousand, eight seventy-six. This resulted in a loss of $47,000 to the State of Montana in markup excise taxes. This unsalable liquor included unusually large quantities of top-selling brands that went through various credit application processes by the distillers, in which they supposedly withdrew their product and supplied credit instead. Eventually the Board recovered part of the cost of this unsalable liquor, but a number of credit memorandums issued by distillers indicated that they consider the cost of unsalable liquor to be a sales promotion expense. Officials were never able to ascertain what became of the greatest portion of this unsalable liquor, and the audit states—I quote from page 38: "There is no question in our opinion that liquor was illegally removed from the warehouse inventory"—end of quote. A large quantity of liquor was found near the board members' meeting room. This liquor consisted of 537 bottles, most of which was repacked in other boxes. Some of the liquor was in the original distiller box and was addressed to various officials of the Board, including the five board members and the administrator and legal counsel. Section 4-153, R.C.M., 1945, states that no member of the board can receive gifts from distillery representatives and must keep accurate records on samples received. Accordingly, no matter how the liquor was removed from the warehouse inventory and distributed, in the opinion of the Legislative Auditor, one or more provisions of the law were violated. Of the 5,000 cases of liquor withdrawn—or the $5,000 cost of liquor withdrawn for unsalable purposes, $2,690 of that supply was on hand at the time of the Auditor's count. The undistributed liquor was subsequently impounded by the Attorney General. In addition, the Board has no permanent record of invoices prepared for damaged or defective merchandise. There is no policy for personnel requirements, and no formal procedures have been set up to minimize personal and financial risk to the state liquor stores as a result of robberies or holdups. These and many other inefficiencies involved in the Montana liquor business could be solved if the state is taken out of the monopoly as it is now. Private enterprise can and will create a greater revenue for the State of Montana. Now, bureaucracy has its inefficiencies, we all know that, and this is sort of one of those—growing into it, and I'm against the political patronage that goes along with this deal. The fact still remains that, in our system of free enterprise, it's the profit motive that keeps our quality of business high in this state, through competition and a personal stake in the overall outcome. There are only a few of the—I mean, these are only a few of the hundreds of unbusinesslike procedures to be found in the report on examination, dated June 30th, 1969, by the office of the Legislative Auditor. It's a hundred and fifty-seven pages in length, and it's available to everybody. Read it; you won't like it. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman. Torrey, you didn't happen to bring a couple of shots with you, did you? We're going to need it. In support of Mr. Jacobsen's amendment, I would like to offer a few statistics here that will be very brief. As you may know, Montana is one of the 18 so-called "monopoly states". However, 2 of the 18, Wyoming and Mississippi, operate from the wholesale level only. Alabama wholesales miniature bottles and half-pints at the wholesale level. Retailing in these states is left to the licensees. If Montana markup of 38 percent, excluding present state taxes, were applied to Wyoming's sales, their net return would exceed that of Montana's, due to their being able to operate with a working force of only 25 people out of one warehouse in Cheyenne. The retail price of liquor in Cheyenne is competitive with Colorado, of necessity. For example, a half gallon of Ancient Age bourbon sells at retail for $8.60 in Denver and Cheyenne and $11.80 in Montana, a difference of $3.80. In the remaining 32 states, liquor is marketed and sold under a competitively open, free enterprise system, with all control still in the hands of commissioners or, in most cases, the ACB boards—alcohol control boards—which handle taxes, markups, licensing and inspections. In some cases, these control units are established at the local level, rather than state. In six of the free or licensed states of Arkansas, Connecticut, Kansas, Kentucky, Rhode Island and Tennessee, the ACB board establishes a minimum markup in addition to all state and local taxes. This would tend to prove that under the free enterprise system, Montana would not lose the present net profit of 4.9 million, as shown in their 1970 financial report of the Montana Liquor Control Board, but would, indeed, gain an additional 2.6 million now being expended in the operation of the monopoly system. The cost of operating this system appear to be excessive in comparison to other free enterprise businesses throughout the state, ranging at 35 percent of the gross profit. There has been concern expressed at a potential loss of jobs for the 400-some people presently employed by the state. These people, and many more, would be absorbed in the retailing and wholesaling new businesses that would result on this changeover to a new method of operation. I'm sure the consumption would not decrease; in fact, it continues to increase every year. The first year of this proposed change in method of operation would result in a windfall for the state and cities and counties, since the present inventory in the state stores and warehouses would be liquidated. The inventory is in excess of $4 million, at cost, and, when all taxes and markups are applied, would exceed $6 million to be distributed between state, cities and counties. In addition, the $6 million inventory would become taxable at the local level. Fellow delegates, there can be a source of new revenue in this changeover to assist our financially hard-pressed cities and counties. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, some of this sounds good if you say it quick, and the only way this can pass this group is for us to vote immediately before anybody else thinks much about it, because just as soon as you start to think about it, some other questions will have to be raised. One thing you'll begin to ask yourself is, "Isn't this the same thing that comes up before every Legislature every time it meets? And you begin to say, "Well, yes, we've been reading our papers, and we're quite familiar." This is the same kind of a proposition that comes up each time. It's been turned down again and again. Then you think back a little farther and you say to yourself, "Did this just happen? Did the Liquor Control Board system in Montana drop out of the sky one day, and all of a sudden, we've been saddled with it by demons? Or was there some reason, originally, for going into the Liquor Control Board system?" And you find yourself repeating several times, as you ask these questions, the word "control". But I notice the word "control" has been left out of these conversations mostly. We've been assured that business would not be injured if we do away with the monopoly—state monopoly on this, and if we leave it to private enterprise, we can actually increase the consumption of alcoholic beverages in Montana. And I have no reason to disagree with people who are far more adequately—adequate and capable of discussing that angle than I am.

(Laughter) I simply would like to emphasize the fact that the board is set up in Montana and named the Liquor Control Board because the word "control" is the key word. Why isn't the state in the business of being a monopoly in competition with other kinds of businesses—farm equipment, automobiles, other things? And the answer is obvious to any person who is an adult, knows anything about how we live together in this society—that liquor happens to be one of those things we have licensed in our midst and allows as a society, but we all do it with fear and trepidation because it happens to have so many attendant social ills that we know that it must be controlled, and we are all a little bit squeamish, usually, about the fact that a society like ours, that's supposed to be civilized, has to have it at all. If someone came here today and proposed selling something that would make one out of every nine cows go crazy, run through the fence and on the highway, or commit suicide, or some way die with what the bovine version of DTs, how far would that get with the rural representation? (Laughter) As long as we're talking only about our own kids, of course, it doesn't make much difference. If every airplane that took off and as you bought your ticket, they made you know that somewhere enroute, say, from here and Chicago, at about 40,000 feet, one out of every nine seats would automatically drop out—we didn't know which ones—there'd be very few takers, and the state probably would be in a sort of a frenzy to control that kind of activity. Well, I don't need to go on with the obvious. Now that you are thinking about it, I think that's all we need to do. Several instances have been raised about the things that ought to be changed in the Liquor Control Board system. One thing is, as Torrey said, a lot of sacramental wine is being used. (Laughter) That really worries me, (Laughter) but it doesn't worry me much when I stop to think that there are very few murders committed in church, (Laughter) and yet every newspaper you pick up has the news of a brawl, a shooting, or something else in a bar and where the wine evidently is not sacramental. (Laughter) I'm not—the point simply is that we're not just simply talking about how we can raise more revenue or have more business by taking away a state monopoly, we're talking about the business of control. You see, actually, if something goes wrong in a public agency and a legislative audit uncovers it, then the public can control its public control agency. Now, I don't presume that Torrey and the others meant to say that all individual businesses handling liquor are perfectly managed and that everybody uses good accounting systems and that there is no dishonesty involved in it or any of the rest. It's just that when it gets out of the public specter [sic], we have no control at all over that kind of thing. Now, businessmen can sell more liquor if we turned them loose; I don't rise to argue about that. I think this is a matter of control. It's been left to our Legislature to handle, and I think that we ought to properly vote against this suggestion.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President, I rise in opposition to the substitute motion. This argument about the various departments of state government, the irregularities in their operation, it isn't only confined to the State Liquor Board. First, I'd like to tell you that I've gone through some investigations of the State Liquor Board years ago—some pretty rank ones—they were straightened up and—

**CHAIRMAN GRAYBILL:** A little closer to your mouth.

**DELEGATE BARNARD:** Not so many years ago, I remember one involved the State Board of Equalization, on gasoline tax refunds. I don't think there's a department of government that you can't go run an audit through, particularly pertaining to methods of operation, and find some irregularities. I've not only seen it in the State of Montana, I've seen it in the U.S. government, and I never saw an audit report that didn't show some irregularities. I think that's something we've got to expect and that's really no excuse to try to do away with the State Liquor Control Board, just because there's irregularities there, and I oppose the motion.

**CHAIRMAN GRAYBILL:** Mr. McDonough—Oh, Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. President, I rise in support of the amendment. We, in the committee, felt that Section 2 was a consumer's protection section in the Constitution, so therefore, I think it's rightfully that the liquor consumer should have some protection also.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, I don't know whether I impeached myself the other day on being able to talk about alcoholism, but I'll stay away from the subject of alcoholism and just talk about money. I don't know what the boys in the—down in the Powder River are doing with all that sacramental wine, but as far as finances are concerned, in fiscal '71, our Liquor Board made $13,114,000, and thus far in fiscal '72, it has made $9,328,010. There are 18 of our 50 states have liquor control boards, and I think the thing that's interesting is to compare the amount of revenue that we receive from the booze as compared to how much we consume. In Montana we consume 1.5 gallons per person, per capita, and per capita we make $15.09; whereas, in a noncontrolled state, they consume 1.96 gallons—or almost 25 percent more liquor is consumed per capita in the state—but the revenue is only $11.99—or about $12 per capita. So, they're drinking more booze in the other states and making less money, and several of the states that are so-called "open states" have been looking at Montana's record, not of drinking but of making money, and have become envious of it, and I understand that the great and sovereign state of North Dakota, which is just a few weeks ahead of us with their Constitution, has now decided to become a closed state, like Montana. The estimate from Joe Shea, the Liquor Board, is that we would lose between $4 and $5 million a year—and this is increasing as we consume more booze and that $4 or $5 million is going to have to come from someplace, and it's going to have to come from property tax, and I think what we ought to do is maybe put an additional tax on cattle or land—or tax the land down in Powder River County, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there other discussion of the amendment?

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, I listened quite closely to Mr. Johnson's statistics on the discrepancies discovered by the legislative post-audit, and I followed those quite closely when those were being brought to light, and I think that this is one of the things that really proved to the people of Montana that our legislative post-audit really was working. But since that legislative post-audit in 1969, those discrepancies have been cleared up, so far as I have been able to find out, and the recommendations of the Legislative Post-Auditor have been carried out by our Liquor Control Board. And I have questioned the legislators returning from the Legislature from Yellowstone County several times about this business, because I thought, along with Mr. Jacobsen, that maybe this was the way to go—that we should get out of the liquor business and let private enterprise handle it—and I thought about all those employees that we wouldn't have to hire and all those liquor stores that we could stop renting or building, but I questioned our legislators, and they told me that they had investigated quite closely—they had investigated California and some of these other states—and they said that from everything they could find out, that our liquor control business here in Montana was run better and we made more money than any of these other states, so I would be very hesitant about taking away our Liquor Control Board.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I rise to resist this amendment on two grounds. One, this was a delegate proposal which was referred to the General Government Committee and was the subject of hearings held by that committee, and if—and was rejected by that committee, and if it is to be brought on the floor as an amendment to a committee report, it seems to me it ought to be an amendment to that committee's report, not to this one. And the second reason that I would oppose it is because of the unnecessarily broad language of the amendment, which is designed to get at one specific thing—namely, the liquor monopoly—and yet is so broad as to cover any business whatsoever so long as it's monopolistic, and as I'm sure you are aware, there is a proposal coming on the floor under the report of this committee which relates to the question of certain monopolistic businesses and proposals, granting power to subdivisions of the State of Montana to engage in those businesses. I would hate to see that subject prejudiced at this point by such a broad proposal directed at such a narrow subject. I would also like to take the opportunity to enlarge upon something that Delegate Harper referred to when he said that one of the advantages of having a liquor monopoly is that any hanky-panky that occurs, being that some of it occurs in a public business, is subjected to the limelight of scrutiny by the legislative audit and by others, by the newspapers. I clipped out of the *Great Falls Tribune*, today, a long article having to do with a quarrel in the State of Nebraska concerning the construction of a nuclear powerplant for one of the publicly-owned power districts in that state, and I'd like to read you one pertinent paragraph. This is from a—from the *New York Times*—it was reprinted in the *New York Times*. "Similar disputes", the author says, "are settled elsewhere behind the doors of corporate board rooms, but this one is difficult to hide because the powerplant is not being built by a privately owned company but by a public power district with a board of directors elected by the 505,000 people of Omaha and the parts of 13 counties in eastern Nebraska." Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is on the amendment by Mr. Jacobsen and Mr. Johnson to take the state out of monopolistic businesses.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I wish to briefly augment the information given by Delegate Kelleher. It is a fact that, outside of the gas tax, which we won't talk about here, the liquor monopoly is one of the biggest suppliers of revenue in the State of Montana. If you leave out the individual income tax and the corporation license tax, it is next in order. It is even larger than the severance taxes—take, for example, the metal mines tax; in 1970, the last year, it produced $1,440,000. The coal severance tax produced $50,300; the oil production license tax, 3,038,492; the corporation license tax of 6,102,000; individual income tax, 24,877. We can't afford to neglect this very provident supplier of revenue and establish in its place a private enterprise system which flourished so splendidly that it brought us Prohibition.

**CHAIRMAN GRAYBILL:** Mr. Vermillion.

**DELEGATE VERMILLION:** Mr. Chairman, I oppose this amendment, and I think, as Mr. Heliker pointed out, it does go beyond the liquor business. And I would point out that coming up at the end of this week sometime, we'll be discussing the so-called "lottery and gambling provision", and if this Convention should deem—see fit to change that, there are some who say in the future there might be a lottery in the State of Montana. That remains to be seen, but if this particular amendment were passed, it would outlaw a state lottery any time in the future.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, would Mr. Garlington yield to a question?

**CHAIRMAN GRAYBILL:** Mr. who?

**DELEGATE WARD:** Garlington.

**CHAIRMAN GRAYBILL:** Mr. Garlington is missing.

**DELEGATE WARD:** How about the Chair? Would you yield, Mr. President?

**CHAIRMAN GRAYBILL:** Well, I'll hear your question. (Laughter)

**DELEGATE WARD:** Well, the article is entitled "Nonmunicipal Corporations", and I'm wondering if the state is a municipal corporation, if this could be defined as such.

**CHAIRMAN GRAYBILL:** You're wondering if the state is a nonmunicipal corporation. I don't think that's quite the right way to put it, but some of these other lawyers might correct me. This doesn't say that—your worried about it being in the wrong place?

**DELEGATE WARD:** Mr. Chairman, this committee had no hearings on any type of this proposal, and I don't believe it belongs in this article, and therefore I oppose the amendment.

**CHAIRMAN GRAYBILL:** I think probably it got here because of the language in Section 2 about protecting the public against harmful and unfair practices. The Chair would prefer that we vote on it. If we adopt it, Style and Drafting would feel free to move it to another section. We've had quite a debate on it. I'd like to get the sense of the body on it. I think I'll still allow them to have it, Mr. Ward. Is there other discussion on the issue?

Mr. Artz.

**DELEGATE ARTZ:** Mr. Chairman, the idea of getting the state out of the retail industry has intrigued me. Basically, I've gone along—that I think private industry is always more efficient than government. We all realize that democracy is the best form of government, but we know it costs money; and in many instances, private industry, because of the way they operate, can do it cheaper. I was quite intrigued by the hundred and thirty-eight pages of comment in the 1969 audit. I am sure that a good many of these things have been corrected, as Mr. Blaylock said, but I don't think they can be corrected so you go completely as far as private industry could with constant supervision. There are some things that really intrigue me in that—possibly they've been mentioned. I enjoyed the fact that the cash control in one store was a little weak, and the lady was short and she said, "Well, I used that money to buy my groceries, but I do put a check in at the end of the month." Mr. Kelleher has been worrying about we'd lose money. The amendment, as I see it, would permit the State Liquor Board to transfer the profit of 4 million in '69 and 5 in '70 from the operation of the state stores to taxes. I believe somebody said that it would take about 50 cents a bottle to replace that money, but the regulation of the taxation is still around. Mr. Harper is worrying about controls. We have the same problems now of controlling liquor sales, because anybody can go to the local tavern and buy it. It costs a little more money, but the controls are there so that it is handled properly. You'll find a few cases where bars do sell to minors, but you would still have the same control. They could be put out of business. I'm not suggesting, by any means, that the state does not retain the right to control and regulate. I would like to see the word "monopolistic" changed some way so that it would not exclude the possibility of public utility districts that will—coming up later, if those were so desired. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen, do you want to close?

**DELEGATE JACOBSEN:** May I close, sir? I have here, ladies and gentlemen, about 35 or 40 letters. And here—one of them reads: "Glad to see someone is doing something to get the state out of the liquor business. This is the place to do this, and not in the Legislature. As you know, the Legislature has been hit with this every time for the last 15 or 20 years." Other letters here are very similar, and so on, but they say, "It is heartening to know that one is being represented at the Constitutional Convention by a person with enough courage to make the proposal you have. For years, thinking people have given lipservice to the fact that a state has no right or need to engage in a retail business. It is entirely out of keeping with our American way of life, yet nothing has been done to change the condition until you now move to do so. I support your proposal and wish you success in your effort." And I have a lot of other letters like that, if any of you would like to see them. Galusha, Higgins and Galusha made a report, February 15th, 1971—and this is concerning the state finance statement and showing what they would lose when this was a bill before—they showed that the state would lose $3,906,000 if they went out of the liquor business; and Galusha, Higgins and Galusha came out and said that, using their figures and taking over the leases and the rents and the whole thing, that the state would gain a hundred seventy-five thousand eight hundred and seventy-six dollars. This is a book here that's been passing around. There's a hundred and fifty-seven pages in it, and there's not one good thing to say about this monopoly liquor business. I mean, it's all finding fault. Now, I'll say just one—a few more words. Our ombudsman that we talked about is here—I find this out—in the Legislative Auditor. He is our ombudsman, and I think that is one of the great things we have done in this Constitutional Convention. "Americans must reform their governmental institutions and make them work, or their free society may not survive. Most state governments are incompetent. All the evidence indicates that we have failed the system. Corruption runs rampant through the systems. We cannot survive long in a free society unless citizens feel that they, themselves, are in touch with their government. Our system is being corrupted by special interests." Most of you have heard these words before, because they were stated by John Gardiner, Chairman of Common Cause, last Thursday, March the ninth. He also stated that four things were needed to help citizens reform government. They are access, responsiveness, accountability and effectiveness. John Gardiner did not know it, but he was speaking partly about a monster bureau we have right here in the city of Helena. It is the monopoly liquor business, which has not been accountable. It is not effective, because there is too much expense. Underhanded business practices have been allowed, for many years, to grow. We know that private enterprise can and does provide a greater benefit than a bureaucracy ever can. Our great nation was actually created by the pioneers, fearless adventurers seeking freedom and a better way of life. Some of these people became the businessmen, both retail and wholesale, along the trails and railroad rights-of-way. These stops and resting places of the early days became the towns and cities we now know. Independent business has been, and is now, the backbone of every community in this way of life of ours. These businessmen and women are the employers, the Chamber of Commerce, and the many other civic groups in every community. Private enterprise is the golden goose that provides not only most of the employment, but a large share of our taxes and other benefits for our schools, special improvements, and so forth. Let's give private enterprise a break by directing the Legislature to take money—Montana out of the liquor business completely except for the directing and policing as they now do, and I—in my proposal, I didn't—I said that the Legislature should set up the controls for that. The state will then receive a greater dividend in the form of taxes and license fees from liquor. Beer licenses and taxes are no problem, nor are gas taxes and tobacco, so it stands to reason that the state can regulate licenses and taxes on liquor so that, at the very least, receive as much as it ever has with the annual increases. Our state liquor stores are open 5 days per week, 8 hours per day.

Under private enterprise, our stores would be open at least 12 hours per day and 6 days per week, giving tourists a chance to leave more of their cash in our state. Also, did you know that at least—that as of last year, according to liquor store figures, we are 45th out of 50 states in consumption of liquor? So we don't consume very much in our state as compared to some of them. You have heard a few important reasons why the state liquor monopoly should be removed. They are from the legislative audit of June 30th, 1969. A dozen more of the complete reports, consisting of 157 pages, are being passed around this hall. Quite a few people have read them, I believe. I have never read anything so unbusinesslike in my life, and every one of you delegates must realize that we are—only have this one opportunity to rid our great state of this scandalous bureaucracy that will just continue to be a source of distrust in our government. The Legislature, over the years, has not acted; therefore, it is up to us to direct our Legislature to do so as part of the plan to create trust in our people for elected officials. We must create a good moral feeling for our government, and we must be concerned about our state's future by taking bureaucracy out of it. Let us here and now take the advice of John Gardiner and make our great state responsible, effective and accountable to the people. Private enterprise can take this bureaucratic liquor monopoly out of the state competitive business and, through free enterprise, competitive practices, create new industry, new taxes and a healthy business climate with more employment for more people. I sincerely believe that this will create many more dollars than we—that we desperately need for education and other things. We have been told that the state will save at least $2½ million by eliminating this monopoly—this came out of Revenue and Taxation. The state controls, as I stated before, would still be on, and we can do this great thing if we do this. Now, Mr. President, I would like to remove this amendment from this section, if it will be possible to put it in General Government, where it possibly does belong; but I thought that protection in this section, and it states so—protection for our citizens from these things that have happened—it would be a place to have a hearing on it. Thank you, sir.

**CHAIRMAN GRAYBILL:** Well, now, Mr. Jacobsen, I don't quite understand you. I am a little loathe to withdraw it at the end of the debate. You certainly could reintroduce it in General Government. I don't see any reason you couldn't. It may be appropriate there, too, but are you saying that you now want to withdraw it?

**DELEGATE JACOBSEN:** Unless you would like to move on it here and then give us an opportunity—

**CHAIRMAN GRAYBILL:** All right, but Mr. Jacobsen—

**DELEGATE JACOBSEN:** —if need be, to get it back in General Government.

**CHAIRMAN GRAYBILL:** —you can't shift that burden to the Chair; it's up to you now. It's your motion, and I'm not going to decide whether to decide it or not. You've put it in, and we have had a debate upon it, and people have heard about it, and I just don't like to waste the debate. But you decide whether you want it voted on or whether you don't. I'm not going to decide that.

**DELEGATE JACOBSEN:** Well, let's have a vote on it. I'd like a roll call vote.

**CHAIRMAN GRAYBILL:** You'd like a roll call vote. Very well, we're going to have a roll call vote on this issue. So many as shall be in favor of Mr. Jacobsen's motion to add a subsection 2 to Section 2 of the Nonmunicipal Corporations Article by adding the language before you about getting the state out of monopolistic businesses, please vote Aye on the voting machine; so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Aye |
| Ask | Nay |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |

| | |
|---|---|
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Absent |
| Choate | Nay |
| Conover | Aye |
| Cross | Nay |
| Dahood | Nay |
| Davis | Excused |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Absent |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Absent |
| Noble | Absent |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Aye |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 18 delegates have voted Aye, 72 have voted No.

**CHAIRMAN GRAYBILL:** 72 having voted No and 18 having voted Aye, the motion fails. We're now back on Section 2 of the Nonmunicipal Corporations Article. Is there further discussion?

Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, I rise in support of the majority proposal Section 2, Protection for Citizenry. I notice in the Bill of Rights book that the research analyst devoted eight pages to the frustrated consumer. I think this is a serious problem and a fundamental problem. I do wish to take issue with Delegate McDonough. I know he said this is a statutory provision. I think that this is no more statutory than the workmen's compensation provision that we adopted in our Bill of Rights Article. I feel that, although it is statutory in some respects, the Legislature already has the power which we're providing in this provision. I think it's necessary at this time to include it in our Constitution. I feel that there are so many features of our new Constitution which we've fretted about and worried about because we feel perhaps the voters will go against our Constitution if we include them. I feel that this is one area where inclusion will be very helpful. I think that the people of this state deserve a right for consumer protection; therefore, I wholeheartedly support the majority proposal.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Section 2 of the committee report. Members of the committee, you have before you, on the recommendation of Mr. Ward that when this committee does arise and report, after having had under consideration Section 2, the Nonmunicipal Corporations Act, that we recommend this be adopted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as are opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Section 3, Mr. Clerk.

**CLERK SMITH:** "Section 3. Cumulative voting. All elections for directors or trustees of incorporated companies shall provide all stockholders the right to vote by person or proxy the number of shares of stock owned by him for as many directors or trustees as are to be elected or to cumulate the shares and give a candidate as many votes as the number of directors multiplied by the number of his shares or to distribute them in a similar manner among as many candidates as he sees fit." Section 3, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, there's an amendment. Do you have a copy of the amendment to that section?

**CHAIRMAN GRAYBILL:** Yes, shall we read the amendment?

**DELEGATE WARD:** Could I have that read at the same time, please?

**CHAIRMAN GRAYBILL:** Will the clerk please read the amendment, too.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 3, page 3, line 21, of the Public Health, Welfare, Labor and Industry Committee proposal by adding the following: 'This section shall not prevent the lawful creation of classes of nonvoting corporate shares of stock and shall not require that their holders vote in elections for directors or trustees of incorporated companies.' Signed: Ward."

**CHAIRMAN GRAYBILL:** Mr. Ward, the Chair would like to know if this amendment is a majority report amendment.

**DELEGATE WARD:** Yes, it is, Mr. Chairman.

**CHAIRMAN GRAYBILL:** All right, if it is, members of the body, you have before you this amendment. Does everyone—is it on the desks? Yes, it's on the desks. It's been our practice to allow the majority report to come in as they want it. I would like to suggest that we quickly allow them to do this, and then we'll consider the whole Section 3 at one time. Is there any objection to that?

(No response)

**CHAIRMAN GRAYBILL:** All right, all in favor of adding the sentence that the majority wants added to their majority report, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** Very well, this amendment, Mr. Ward, is incorporated in your report. Now, go ahead.

**DELEGATE WARD:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 3 of Proposal 9, that it recommend the same do—be adopted.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, this section was retained from the old Constitution as a protection to the minority stockholder. During the committee hearings and in consultation with other people, this amendment was presented and it was accepted by the committee, and basically, it's statutory—I'll agree with Mr. McDonough—but it was felt by the committee and by many people who I contacted that this should be retained. It's covered in the statutes, but at the same time, if these were repealed or amended, it was felt by the committee that this should be retained in our present Constitution.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I guess I was blended in too much with the wall back here and you didn't see me on that last vote that was taken. But my name appears on this majority report, but according to the instructions in the introduction, I would like to be recorded in opposition to that particular amendment. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Are you talking about the amendment that we just took, adding the sentence to subsection 3?

**DELEGATE SCANLIN:** That's right.

**CHAIRMAN GRAYBILL:** All right, the journal may show that you're in opposition to that, Mr. Scanlin.

**DELEGATE SCANLIN:** Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there other discussion of Section 3?
Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, as a substitute motion, I move to delete Sections 3, 4 and 5 of the majority report, if that's in order.

**CHAIRMAN GRAYBILL:** Well, I think we'd better take them one at a time. Let's take 3. You can explain that you will move to delete 4 and 5, if you want to, but I have it—we have to do it section by section, and we haven't moved the other.

**DELEGATE LOENDORF:** Well, I think we can just test the waters on one of them. I think the reasons for deleting one are the same for all of them, and I will not make the motion to delete 4 and 5 if the motion to delete Section 3 then fails.

**CHAIRMAN GRAYBILL:** Very well, the motion to delete Section 3 is made, and, Mr. Loendorf—and you may discuss it.

**DELEGATE LOENDORF:** Okay. I think everybody here has recognized this is statutory, and I would just like to test the waters and see how much of this statutory stuff we want to put in the Constitution. I really have no particular feelings about this provision. I support it on its merits. In fact, it's found in our present statutory law. It's one of the 140 sections of the new Business Corporations Act, enacted by Montana here within the last 5 or 6 years; and when I look at one of the statutes in the Constitution, I wonder, and I cannot see the difference, why this particular provision deserves constitutional status and the other 139 sections do not. This provision merely deals with how directors of corporations are elected. Now, if this amendment which has been proposed is needed, then for the last 89 years—or 82 years since our Constitution was first adopted, we've been violating that Constitution, because Section 3 is merely a restatement of Section 10 of Article XV of the former Constitution, so I think you can see one of the problems involved in putting statutory matters in a constitution. We already have to have an amendment, or think that we do, before we even have adopted it on the floor.

**CHAIRMAN GRAYBILL:** Is there further discussion?
Mr. Swanberg.

**DELEGATE SWANBERG:** I might state at this time that Mr. Ward, in the research on this subject, contacted several members of the Bar that are in our membership, and I believe that he would agree that he placed these for your consideration on the basis of the recommendations he received. It was my own personal opinion that practically the entire section here probably could be deleted—that is, Sections 1, 2, 3, 4 and 5, and possibly 6—but that, as a matter of courtesy to the other members of the Bar here—and there's a very real possibility they may have something to add—we thought we would leave these sections in for their discussion on the floor. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I must confess that I have a part of the responsibility for this, and I am the one who composed the amendment that Dr. Ward has very kindly made a part of the majority report. The reason I did that is that the old law does prevent the creation of nonvoting shares of stock and it does prevent the application of one of those sections of the uniform business corporation law that the Legislature adopted, and it came to my attention, especially because it loused up the plans of a client of ours over in Missoula who was trying to make with his own family corporation for his estate, because, in simple terms, he had a small family motel, some children growing up—one of them would stay with the business, the others wouldn't—and he wanted to give part of his corporation to his kids, but he wanted to retain control, and his accountant said, "Well, why don't you just create a nonvoting class of stock, and you keep the voting stock and the kids can have the other, and this will all work out." Well, it was unconstitutional. This is really palpably ridiculous, because what is said here about this statutory material being in the Constitution is entirely correct. If you were to take this book on the comparison of Montana Constitution with other constitutions, Volume V, and turn to Article XV therein, which is where we have all our corporation law, you would find, on page after page, that in Alaska, Hawaii, Michigan, New Jersey, Puerto Rico, the model constitution, it says "no comparable article", "no comparable article", "no comparable article". So, I guess what we have in our Article XV is simply an archaic carryover of the early days of the Copper Kings and the problems they had in those days with them and their railroads and one thing and another. So I make this explanation, Mr. Chairman, just to show how we got into this situation, but I really think that Mr. Loendorf is entirely correct in that we could well delete this material, consistent with the principle that I think some of us have tried to advocate right along, that this Constitution is to be limited to basic, fundamental structures of government and that we should not try to stick turkey feathers into the constitutional eagle.

**CHAIRMAN GRAYBILL:** Is that one of those eagles we were looking for a few weeks ago? All right, is there other discussion?

Mrs. Van Buskirk.

**DELEGATE VAN BUSKIRK:** I would like to tell the delegates here that of all the lawyers that we contacted, it seems that each one of them—that these three sections—that one of them was their pet, that they did not want to see it deleted from the Constitution. So we figured that of all the lawyers that we talked to and all the other people that were involved in this—that these were the three major sections that they would not like to see deleted and that, as has been mentioned, that they are statutory, but they would not like to see them removed from the statutes, so they would like to see them in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I might state that this committee went to the Secretary of State's office, it went to the Auditor's office, it went to the Attorney General—not an official opinion, but from staff. We discussed this for and back, and here was the reason the committee has put this in: we trust the Legislature, but all of a sudden, we get out here and the Legislature could do things and repeal. If we've got something in the Constitution and relating to these corporations, other than municipal, we can protect the people for the long haul and we can also protect the corporation. I think we have to realize there's got to be protection on both sides. And this is the reason. We've known all this is statutory; we've been told this a number of times. And we have seen it, we have looked it over; but in—the committee, in its wisdom, decided that maybe a little bit of statutory for the protection of the public in the Constitution wouldn't hurt anything—protecting the public and the corporations; and if we're going to come out here today and say—after some of the things we've put in this Constitution in the last few days, I think we aren't going to make it up here. And I sure hope this motion does not prevail, because the committee, in its wisdom—and it was not easy, we spent hours on this thing to determine we thought it was the best for the State of Montana as a whole.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Yes. May I ask Mr. Heliker a question? If he is the person who might have the answer to this.

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE HELIKER:** I yield, reluctantly.

**DELEGATE HARPER:** Mr. Heliker, a young former Montana citizen, who still considers himself that, I think—a graduate of the University—is now working for the state air pollution agency—control agency in Minnesota, and the other day he called to ask about one or two things—just out of interest—and, as an environmentalists, he was trying to stress to me—and I didn't have this section before me and I hardly knew what he was talking about—this matter of cumulative voting. How would this relate to people who were interested in environment? And I'm really asking this as a matter of information.

**DELEGATE HELIKER:** Beats me. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** In answer to Mr. Harper's question, I think that that question should be aimed at Section 2 instead of Section 3 and—as far as the environment goes.

**CHAIRMAN GRAYBILL:** Is there further discussion?

Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. I support the motion of Delegate Loendorf. I think that we have to take this seriously. I think there are two points. One is that, right or wrong, to some degree, we will be measured in the work we do here by the length of the document, and if there is not any real clear mandate to include this in the Constitution, I think that, in fact, we would be well to leave it out; but secondly, and probably more important, is that these matters which are admittedly statutory, something that the Legislature really should handle, change from time to time, and something that might be very good and well to preserve at the present time might not be so good 10, 15, 20 years from now. And I think that, in this particular case, that we would be much better to leave it to the statutes and delete it from the Constitution and then allow—if the situation changes for some reason 20 years from now, allow the Legislature to update the situation as it sees fit at the time that the problem arises. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Well, this particular section has been in the Constitution for all these many years, since the first one was written, with the exception of the last sentence. Yes, the amendment made by Mr. Ward. Now this particular section was Mr. Mahoney's baby, I believe, and I'd like to ask Mr. Mahoney a question.

**CHAIRMAN GRAYBILL:** Mr. Mahoney?

**DELEGATE MAHONEY:** I'll yield, please.

**DELEGATE HELIKER:** Charley, as I recall when we discussed this in committee—and incidentally, I wasn't consulted on this amendment, therefore I'm in the same class with Mr. Scanlin, I guess, although I don't necessarily oppose it—but I would like to ask you, since it seems to me that you were opposed to such an amendment, whether you now accept it and, if so, just exactly what is your reasoning on that?

**DELEGATE MAHONEY:** Well, Mr. Chairman, I might state this: that in the first place, I was bothered about a number of kinds of stock, and the reason—I was thinking—I could see mutual funds, I can see a lot of these things that are getting in now to take the people's money; so this is where—now I discussed this with Mr. Ward, and out of deference to Mr. Garlington, this is how's they come that they said they—it wouldn't affect the mutual funds or these out-of-state operators, that I could see happening. And this is why I am supporting that amendment, Mr. Heliker—is that it won't affect mutual funds or those; then we have a different kind of stock. This is my understanding of it.

**DELEGATE HELIKER:** May I ask further?

**DELEGATE MAHONEY:** Yes, I'll try.

**DELEGATE HELIKER:** You don't feel that this added sentence subverts the purpose of the old section?

**DELEGATE MAHONEY:** Well, I don't think this works the part of the cumulative voting—this is what—that one of the main things we discussed in this section was the cumulative voting so that minor stockholders could get somebody on the board—this was the main thing, was my reasoning in there—was letting the minor stockholders get somebody on the board and cumulative voting; and I don't think it's hurting it as bad as maybe we—I may think. Now, Mr. Garlington has explained his idea on it.

**DELEGATE HELIKER:** May I ask another question?

**DELEGATE MAHONEY:** Yes, sir.

**DELEGATE HELIKER:** Well, isn't the effect of this amendment to keep minority stockholders from getting on the board?

**DELEGATE MAHONEY:** No, I wouldn't concede that point. I'll see if I can find it right here. I wouldn't say that. I—"The section shall not prevent the lawful creation of classes of nonvoting corporate shares of stock and shall not require their holders vote in elections for directors or trustees of incorporated companies." Now, Mr. Ward went into this much deeper than I would, and than I did, and I'd like to have Mr. Ward answer on this particular section. He went into it much deeper than I did, and he told me it was all right.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman, I think Mr. Harper didn't get a very good answer from Mr. Heliker on his question as to how cumulative voting could be used by environmentalists. I think the obvious answer is that a group of environmentalists, under cumulative voting, could acquire a directer on the board who would be favorable to their position.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** Mr. Chairman, I would like to bring another point out that I don't believe has been brought out. In the codes, in the statutes we now—under which we now operate, the model business corporation act provides for the wording that we have in Section 3. Now, this model business corporation act is, as I understand it, a uniform law that the American Bar Association has quite a little to do with, and it's sort of a national agreement of the ground rules under which we operate. Say a corporation in Montana were to—say it wanted to go public in the national, or sell stock publically. If sometime during its life the model business corporation act were to change its ground rules, so that the corporation act were to change nationally, but because it is written into our Constitution in Montana, it were prohibited—the corporation that is a Montana resident were prohibited from complying with the national act, then the stock in that company would be much less desirable and maybe difficult to sell in many states around the country. So this—by writing this into our Constitution, we may be precluding the possibility of corporations coming into Montana and setting up with Montana as a home base, or it may encourage Montana corporations which may some—at some point in their life, desire to become a public corporation—they may move to another state because of the lack of compliance. So I would suggest that we leave it in the statutes, where it can be changed by the Legislature at a later time. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The issue is on whether or not to delete Section 3, on Mr. Loendorf's motion. Is there other debate? You want a roll call vote? Very well, all in favor of Mr. Loendorf's motion to delete Section 3 in its entirety from the Nonmunicipal Corporations Article, please indicate so by voting Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot, please.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Absent |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Absent |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Excused |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Nay |

| | |
|---|---|
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Absent |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Absent |
| Noble | Absent |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Absent |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 67 delegates have voted Aye; 25 have voted No.

**CHAIRMAN GRAYBILL:** 67 delegates having voted Aye, 25 No, Section 3 is deleted. Will the Chair—clerk read Section 4.

**CLERK SMITH:** "Section 4. Long-short-haul clause. No transportation company shall be allowed to charge, under any penalties which the Legislative Assembly shall prescribe, any greater charge for the transportation of freight or passengers to any place upon its route than it charges for the transportation of the same class of freight or passengers to any more distant place upon its route within this state." Section 4, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 4 of Proposal 9, it recommend the same be adopted. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** The—this Section 4 is taken from Section 5 of the old Constitution. And during our research, we find that all transportation companies are regulated by ICC regulations—that's interstate transportation companies. This is the only statute on the books to—in the Constitution that we found that regulates intrastate railroads. At this time we have three railroads in the state—intrastate railroads—one from Anaconda to Butte, there's one up in the northeastern part of the state, and then, in the future, we don't know what's going to happen to some of these coalfields in eastern Montana. So it was—the consensus of the committee was to leave this in the Constitution as is.

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** Mr. Chairman, I'd like to support Mr. Loendorf's motion to delete this. I think we can, by statute, take care of future John D. Rockefellers employing this device—unfair competition—and if this is retained in the Constitution, I'm posting notice that I will submit an amendment to require the Butte-Anaconda-Pacific to retain a passenger ticket agent.

**CHAIRMAN GRAYBILL:** Well, at the moment we don't have an amendment. Mr. Loendorf, do you want to make one?

**DELEGATE LOENDORF:** I'll so move now, Mr. Chairman, that we delete Section 4 of the majority report. I think it's obviously statutory, and I have just noted that the Legislative Council report—your report Number 6 recommends its repeal and states that none of the other six Constitutions which they studied had a similar provision. The previous constitutional preparatory commission in this state recommended its repeal in report Number 7, and looking at the Constitutions of Illinois, which was just passed, and the proposed Constitution of North Dakota, they handle private corporations with the one sentence, in the case of Illinois, and it took North Dakota two. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Mahoney.

**DELEGATE MAHONEY:** We—this is put in here at the suggestion of the Railroad and Public Service Commission. This is not put in here—they said they thought it was necessary, there was no question about it; and they have asked for it. Now if we should decide here that the former Legislative Councils in all these studies know more than the Railroad Commission, then we vote her out.

**CHAIRMAN GRAYBILL:** Is there further discussion?

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President, I would like to ask a question of any member of the committee. Mr. Ward, in connection with this Section 4, if this were out, would there be anything in our Constitution which would prevent the Burlington-Northern from charging a lower rate from Seattle to Minneapolis than they charge for hauling the same amount of goods in Montana, mileagewise, from Butte to Minneapolis?

**DELEGATE WARD:** Mr. Habedank, I think as long as you're crossing state boundaries that this would be regulated by ICC.

**DELEGATE HABEDANK:** That would be covered entirely by the federal long-short-haul clause, then?

**DELEGATE WARD:** Yes.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Loendorf's motion to strike or delete Section 4 in its entirety. So many as shall be in favor of that motion, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Absent |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Absent |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Excused |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Absent |
| Graybill | Aye |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Nay |

| | |
|---|---|
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Absent |
| Noble | Absent |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 53 delegates voting Aye, 38 voting No.

**CHAIRMAN GRAYBILL:** 53 delegates having voted Aye and 38 having voted No, the Section 4 is deleted. Will the clerk read Section 5.

**CLERK HANSON:** "Section 5. Watered stock provision. No corporation shall issue stocks or bonds except for labor done, services performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without consent of those persons holding a majority of the stock first obtained at a meeting held after notice given in pursuance of law." Mr. Chairman, Section 5.

**DELEGATE WARD:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 5, Proposal 9, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** This is another—the same section as Section 3. The same—I shouldn't have very much to say about this. We retained this section for the same purposes that we did Section 3.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, as a substitute motion, I'll move to delete it, again for the same reasons that we deleted subsection 3—or Section 3, rather.

**CHAIRMAN GRAYBILL:** Very well. On Section 5, Mr. Loendorf has a motion to delete Section 5 in it's entirety.

Mr. Loendorf, do you want to discuss it?

**DELEGATE LOENDORF:** I'll discuss it only if I have to close, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there other discussion?

(No response)

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Loendorf's motion to delete Section 5 in its entirety. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. Will the clerk read Section 6.

**CLERK HANSON:** "Section 6. Retrospective law prohibition. The Legislative Assembly shall pass no law, retrospective in its operations, which imposes on the people a new liability in respect to transactions or considerations already passed." Mr. Chairman, Section 6.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 6, Proposal 9, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** This is another protective—protection from the Legislature. This comes from Section 13 of the old Constitution, and this is one article that both the council and the commission recommended retaining in the Constitution. They recommended it—passing it to the Legislative Article. The Legislative Committee was contacted, and they looked it over and sent it right back to us. So, we have retained it except for deletion of—we deleted "county and municipal subdivisions of the state". Otherwise, the reading and the intent is the same.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, would Delegate Ward yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Ward?

**DELEGATE WARD:** I yield.

**DELEGATE FOSTER:** Jack, would you explain to me what the difference is between this Section 6 of yours and the section that we passed in the Bill of Rights, which says that no ex post facto law nor law impairing the obligation of contracts—and goes on—can you explain what the difference is?

**DELEGATE WARD:** You may have to call on some of the legal counsel, but I was told that the ex post facto law pertained to criminal cases, whereas this law wouldn't. If I'm incorrect, I think maybe we could call on Mr. Berg.

**CHAIRMAN GRAYBILL:** The section in the Bill of Rights is Section 31, if you happen to want to look at it.
Mr. Berg.

**DELEGATE BERG:** That is correct. Ex post facto laws relate only to criminal proceedings. The retrospective laws which are referred to by this section would apply to civil matters, as distinguished from criminal. And insofar as the prohibition against the—I can't recall offhand—against contracts that may not be—I can't recall—the wording is my problem offhand. Do you have the wording there in the Bill of Rights? That's what I—I can't recall it, exactly.

**CHAIRMAN GRAYBILL:** Read him the Bill of Rights, Mr. Foster. Section 31.

**DELEGATE FOSTER:** Mr. Chairman. It states: "No ex post facto law nor law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises or immunity shall be passed by the Legislature." Now it seems to me that that provision covers it, and I would like to ask Delegate Dahood to yield to a question, if—

**CHAIRMAN GRAYBILL:** Mr. Dahood?

**DELEGATE DAHOOD:** I yield, Mr. Chairman.

**DELEGATE FOSTER:** It was my understanding, in the discussion of the Bill of Rights, that this provision does go beyond the area of purely criminal cases; now am I mistaken in that? Is this—?

**DELEGATE DAHOOD:** The Bill of Rights provision?

**DELEGATE FOSTER:** Yes.

**DELEGATE DAHOOD:** Yes, it does. The Bill of Rights provision, with respect to the other language, Mr.—Delegate Berg, does extend to all matters. That's correct.

**CHAIRMAN GRAYBILL:** I think the question these civilians are asking you lawyers is whether Section 6 is necessary in view of the other language in Section 31. Does any other lawyer want to hazard a guess?
(No response)

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, in order to get this matter off the floor and to get me in my seat, I submit that—it was my understanding that the provision we had in the Bill of Rights would cover the subject in Section 6, and unless someone shows me to be wrong, I would move to delete that section. But I'll leave that question for the moment.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, in comparing the two sections, there is language in present Section 6 which is before the Convention at this time—before this committee—that would perhaps extend a protection beyond what is within the Bill of Rights section. Within the Bill of Rights section, we provide there shall be no law made impairing the obligation of contract. Now this Section 6 is—indicates the Legislative Assembly shall pass no law. It conceivably could be that some law could be passed that would tend to affect a legal situation, as contemplated by 6, that would not impair the obligation of contract. Quite frankly, for that reason, I would be inclined to want to leave Section 6 as it is. If there is some doubt as to whether or not the people are receiving full protection, I would much rather resolve that doubt in their favor and leave Section 6, to make sure that all those avenues are covered and protected.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** Would Mr. Swanberg yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Swanberg?

**DELEGATE SWANBERG:** I yield.

**DELEGATE McDONOUGH:** Could Section 6 in any way be interpreted to prohibit the Legislature from enacting laws protecting the public safety, health and welfare that might override or supersede a contractual right?

**DELEGATE SWANBERG:** Say that again, Mac, will you.

**DELEGATE McDONOUGH:** I don't know; I'm just asking the question. Would Section 6 prevent the Legislature from enacting a law relative to the public's health, safety and morals, such as a sanitation law, which would override a contractual right, a previous contractual right? In other words, if the Legislature wanted to tighten up the sanitation standards and there was a contract that said that they must conform to certain standards, would that prevent the Legislature from doing that?

**DELEGATE SWANBERG:** I don't think it would prohibit that kind of a statute.

**DELEGATE McDONOUGH:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** One possible application of this Section 6, I think, would be in connection with taxation. For instance, if we were a legislative body, we could not now impose a tax on a transaction that occurred in the year 1971. And this would make it certain that you could not impose a liability on something that occurred prior to the date of the enactment of the law.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** I can't refrain from rating the interesting comment that the preparatory commission made on this section—the preparatory commission that preceded this one. They noted that although the Legislative Council recommended that the present Section 13 of Article XV be deleted, the Judicial Subcommittee recommended that this section be retained and transferred to the Legislative Article. They then say, "This section is probably obsolete and not necessary. It could be revised, the Legislative Assembly shall pass no law retrospective in its operations." Very confusing, I think, of the people who prepared the research.

**CHAIRMAN GRAYBILL:** Very well. The Chair understands the issue to be on Section 6, retrospective law prohibition, and the Chair does not have any amendments at the moment.

Mr. Ward, do you want to close?

**DELEGATE WARD:** Yes, Mr. Chairman. When the committee drew up this new article on the—on this Section 6, at that time we were going by what was in the old Bill of Rights and we didn't have the new Bill of Rights, but I think for the protection of the people and everything else, I'd prefer to retain it if possible. Thank you.

**CHAIRMAN GRAYBILL:** Now, Mr. Foster, I don't want any misunderstanding here. The Chair did not—the Chair understood that you did not make a motion, you just suggested a motion; is that right?

**DELEGATE FOSTER:** Well, in case there's some question, I will move to delete the section. I think that the provision in the Bill of Rights covers it, and I think there might be some question of conflict between the two, and I personally would like to see it deleted.

**CHAIRMAN GRAYBILL:** Very well. The Chair will allow Mr. Foster's motion to delete Section 6. Now we'll debate it.

Mr. Berg.

**DELEGATE BERG:** I rise to resist the motion to delete. The impairment of a contract provision in the Bill of Rights is not as broad as the retrospective action proposed by this section—and which we have always had—except that it is broadened here. It would, as Mr. Felt suggests, take care of a situation where a tax has been imposed, so that on a retroactive basis that would be prohibited so far as the Legislature is concerned now; and I think that's a very valid reason and purpose for continuing this provision in the Constitution.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, I may have missed this along the line, but in case we do decide to retain this—and it seems to me pretty iffy when there is so much hesitation about what the meaning is. In what way has this been broadened from what we have had before, exactly, Mr. Ward?

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** As I stated before, Mrs. Eck, the removal of—"county and municipal subdivisions" was deleted from—as stated in the old Constitution. So I presume that it—the wording was changed but the main meaning is still there.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Would Mr. Ward yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Ward?

**DELEGATE WARD:** I yield.

**DELEGATE ECK:** In other words, it's really been narrowed so that this just applies to the state, whereas it used to apply to subdivisions also?

**DELEGATE WARD:** Well, you'd have to have one of the legal minds do this interpretation, but I would say it would apply to any transaction that has a new liability to the people, any place.

**DELEGATE ECK:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** I just wish to say that I support Mr. Foster's motion to delete, because of the fact we actually don't all know what it means, and if—does—we don't know what it means, we should delete it out of the Constitution.

**CHAIRMAN GRAYBILL:** Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** Very well. Members of the committee, you have before you Mr. Foster's motion to delete Section 6.

Mr. Foster, do you want a roll call?

**DELEGATE FOSTER:** Yes.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of deleting Section 6, vote Aye; so many as shall be opposed to deleting Section 6, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Absent |
| Artz | Nay |
| Ask | Aye |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Absent |
| Bowman | Nay |
| Brazier | Nay |

| | |
|---|---|
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Excused |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Absent |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Absent |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Absent |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Absent |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Absent |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Absent |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 24 delegates voting Aye, 61 voting No.

**CHAIRMAN GRAYBILL:** 61 having voted No and 24 Aye, Mr. Foster's motion fails. We're back on Section 6. Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** Very well. Members of the committee, you have before you for your consideration, on the recommendation of Mr. Ward that when this committee does arise and report after having had under consideration Section 6, that we recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted. Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I move we stand in recess until 3:45 this day.

**CHAIRMAN GRAYBILL:** The motion is to recess until 3:45. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered.

(The Committee recessed from 3:25 p.m. to 3:45 p.m.)

**CHAIRMAN GRAYBILL:** The committee will be in session. Ladies and gentlemen of the committee, we had finished the Nonmunicipal Corporations Article. And now, if you will turn, on public health schedule, to page 13, we'll take up Institutions and Assistance. Very well, Mr. Clerk, will you read Section 1, and the—the title and Section 1 of Institutions and Assistance?

**CLERK SMITH:** "Be it proposed by the Public Health, Welfare, Labor and Industry Committee: that there be a new article on Institutions and Assistance to read as follows: 'Section 1. Institutions. Such institutions as the public good may require shall be established and supported by the state as may be prescribed by law.'" Section 1, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President, I move that when this Committee does arise and report, after having had under consideration Section 1 of the Institutions and Assistance Article of the Public Health, Welfare, Labor and Industry report, do recommend that the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** This section and the old section in the present Constitution, which will be found on page 27 of the yellow book, are practically the same except that our section does not specify the institutions which they can set up. The old section did, and we saw no advantage in this specification. I might also add that the only real problem we had with it was the soldiers' home, and we met some resistance in that area. Some felt that the soldiers' home, I believe it's in Columbia Falls, should have some constitutional mention; the majority of your committee did not see why that should be necessary, and so we stuck with the general enumeration. I might add, also, that the Legislature has plenary power, as it is, to establish these institutions and that if the section were deleted, there would be no loss. The majority of your committee, however, felt that this probably should be a step left to the body as a whole.

**CHAIRMAN GRAYBILL:** Very well. Mr. Rygg, you have an amendment; do you want it read?

**DELEGATE RYGG:** Would you read it, please?

**CHAIRMAN GRAYBILL:** Very well; the clerk read Mr. Rygg's amendment.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 1, page 13, being lines 8 through 10, by deleting the section in its entirety and inserting in lieu thereof the following language: 'Such institutions, including homes which may be necessary and desirable for the care of veterans, as the public good may require may be established and supported by the state as may be prescribed by law.' Signed: Rygg."

**CHAIRMAN GRAYBILL:** Mr. Rygg proposes an amendment which would delete the language of Section 1 in its entirety and substitute therefor this other language that you have before you: "Such institutions, including homes—for—veterans, as the public good may require", has the effect of including this parenthetical phrase, "including homes which may be necessary and desirable for the care of veterans", into the language of the committee.
Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman, this amendment is offered on behalf of a good number of veterans, not only in the Columbia Falls area, but from various parts of the state. They seem to feel that the Veterans' Home is really not an institution because, they say, one has to be committed to an institution. The Veterans' Home is now under the Board of Institutions, and they wanted this wording enlarged to include the understanding that they didn't have to be committed but be—could just apply for residency. Now, I suppose I could quote Mr. Nutting, as he said yesterday, and say, "This is rather innocuous and won't take much room and make a lot of people happy", but I think it goes deeper than that and shouldn't be treated that lightly. These veterans want their dignity preserved, and they feel that this is one way of accomplishing that. Now, I suppose maybe it's proper that I say I am on the advisory board of the Veterans' Home in Columbia Falls, if you think that would make any difference in my thinking, and I did go to the committee chairman and tell him of this amendment, so it isn't exactly a surprise to him. But I do feel that the veterans all over the state would really think that their rights were being protected if we could be allowed to put this in the Constitution. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President, I resist the proposed amendment, for the reasons which I stated a few moments ago and for the additional reason that Section 35 of the Bill of Rights Article provides the people declare that Montana servicemen and servicewomen and veterans may be given special consideration, determined by the Legislature. I think the real worry that the veterans have is that this home in Columbia Falls, once it's taken out of the Constitution, would probably be abandoned by the Legislature. I think, with—the inclusion in the Bill of Rights of this section saying that veterans shall be given special consideration will prove to be a very good foundation and a very good argument for those who want to see the home retained. And for this reason, I would resist the amendment. As far as providing for the Veterans' Home in the majority article, I would have no objection to the inclusion of the two words "and facilities" after the word "institutions", in line 8 on page 13. The section would then read, "such institutions and facilities as the public good may require". This would take away the stigma of the word "institutions" applied to the veterans who lived in that home and might go a long ways towards solving Mr. Rygg's objections to it. So I would move at this time that Section 1 of the Institutions and assistance Article—yes, article—on page 13—be amended, on page 8, by adding the two words "and facilities" after the word "institutions".

**CHAIRMAN GRAYBILL:** Very well, I'll consider that a substitute motion for Mr. Rygg's motion. And we now have Mr. Swanberg making a substitute motion to add the words "and facilities" after the word "institutions"—"such institutions and facilities as the public good may require shall be established and supported by the state." You may discuss both Mr. Swanberg's and Mr. Rygg's amendment at once, it seems to me.

Mr. Siderius.

**DELEGATE SIDERIUS:** Mr. Chairman, I support Mr. Rygg's amendment. I've had quite a little—quite a few letters on this issue, and if we don't do anything else but make—satisfy the veterans, I support this amendment.

**CHAIRMAN GRAYBILL:** Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman, would Mr. Rygg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Rygg?

**DELEGATE RYGG:** Yes, I'll yield, Mr. Chairman.

**DELEGATE CONOVER:** Sterling, does this include private institutions, like here in Helena?

**DELEGATE RYGG:** No, I'm sure—private institutions?

**DELEGATE CONOVER:** Like the Crittenton Home.

**DELEGATE RYGG:** I'm sorry, I didn't hear the question, Mr. Chairman. (Laughter)

**CHAIRMAN GRAYBILL:** Private institutions like the Crittenton Home?

**DELEGATE RYGG:** Like the Crittenton Home here in Helena? Well, no, this refers only to institutions under the Board of Institutions, as I read this, Mr. Conover.

**CHAIRMAN GRAYBILL:** Very well. Mr. Melvin.

**DELEGATE MELVIN:** Will Mr. Rygg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Rygg?

**DELEGATE RYGG:** Yes, Mr. Chairman.

**DELEGATE MELVIN:** Mr. Chairman. Mr. Rygg, where is the soldiers' home presently, is it statutory or constitutional?

**DELEGATE RYGG:** Well, I think its—I don't know if it's listed in that section or not. I don't know if it is. I thought it was just statutory, but, they tell me it is listed in the Constitution now and it was removed in this—by this committee. Is that correct? So it is in the Constitution now, and it has been removed by the committee.

**DELEGATE MELVIN:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** I'd like to stand, Mr. President and fellow delegates, in support of Sterling's proposal. Our veterans up there are very, very happy. We have just recently built a new addition to the home. This is a home for them; they're happy there. And some of you are possibly veterans and may one day wish to go there. And it's in a beautiful valley. I think that the least we can do is keep them in our new Constitution as veterans.

**CHAIRMAN GRAYBILL:** Mr. Lorello.

**DELEGATE LORELLO:** Would Mr. Rygg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Rygg?

**DELEGATE RYGG:** Yes, I'll try, Mr. Chairman.

**DELEGATE LORELLO:** Mr. Rygg, when Mr. Swanberg added these two words over here, does that do what you want to do in your amendment?

**DELEGATE RYGG:** Well, it doesn't do what the veterans want to do; no.

**DELEGATE LORELLO:** I will support Mr. Rygg in this.

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, I rise in support of Mr. Rygg's motion, and I do note that under Article X, Section 1, of our present Constitution, it does provide for the soldiers' home, such other institutions as public good may require. So it appears that it is constitutional, and I think it should remain so.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, for to get the benefits straight, I voted against this article, and if you'll look—so that there'll be no question about it—on page 53, I voted No—so you won't think I'm deserting the committee, I voted No and the very reason—the first thing I said when this came in was that will—this could close the soldiers' home. Now I happen to know they've had some troubles in the past. There's not too many there. But I feel that the veterans of this state have worked; they've got a new building; they've got a lot of things. And I certainly would like to see this maintained in the Constitution, because here's what's bothering me—there's a move underfoot in the last session of the Legislature to limit membership. All of a sudden, they went down here to the school that—out of Twin Bridges and said you can only have so many. Now they are talking of moving the girls' school down to the boys' school at Miles City. And I just like to hold these soldiers pretty solid there, and I think they've done a great thing for this country, and let's leave the soldiers' home in, please.

**CHAIRMAN GRAYBILL:** Mr. Heliker. I'll get back to you in a minute, Mr. Swanberg.

**DELEGATE HELIKER:** Mr. Chairman, I have no objection to Mr. Rygg's amendment. We've had a lot of—how shall I say—flak on the subject. I would like to ask Mr. Rygg a question; I hope I'm not repeating one that's already been asked, Sterling.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE HELIKER:** Is the veterans group aware of this, and do they approve of this particular language?

**DELEGATE RYGG:** Yes, they are aware of the language that was in there, and they—as far as I know, they approve of it. I have—I wrote to them several days ago. And actually, the language came from Mr. Kellner, at my request of some way of including it in there.

**DELEGATE HELIKER:** Yes, it was my recollection that this language was that suggested by the veterans group. Actually, it doesn't accomplish what they would like to accomplish, which is the guarantee that the soldiers' home be maintained at Columbia Falls. And if I remember correctly—and Mr. Mahoney can correct me if I'm wrong—that the fight in the Legislature was about removing the location of the home. Nevertheless, it always seems to me to be a good buy when you can get something for nothing, and it doesn't seem to me we're giving away anything and we may be avoiding some trouble, because this particular group is very well organized and very adamant about this; and even though they probably aren't accomplishing what they'd like to accomplish, nonetheless, I accept the amendment.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I rise to oppose the amendment and offer a substitute motion.

**CHAIRMAN GRAYBILL:** Well, we've got a—let's see. We've got an amendment—we've got a substitute motion, but I'll hear it. Maybe it's an amendment to Mr. Swanberg's motion, and then it could be allowable; if not, you can explain it.

**DELEGATE SCANLIN:** My substitute motion would be simply to add another sentence to Section 1 saying the soldiers' home at Columbia Falls shall remain inviolate forever. (Laughter)

**CHAIRMAN GRAYBILL:** I don't know that the Chair can effectuate that amendment, but—

Mr. Rygg.

**DELEGATE RYGG:** To answer Mr. Heliker's question, I think that this is exactly what they would want. (Laughter)

**CHAIRMAN GRAYBILL:** All right. You want to make that amendment; is that right, Mr. Scanlin?

**DELEGATE SCANLIN:** Yes.

**CHAIRMAN GRAYBILL:** All right, have you got it in writing? Okay. Very well, Mr. Scanlin has an amendment which we will consider an amendment to Mr. Swanberg's amendment, Mr. Swanberg having put in "such institutions and facilities". So what we'll do with Mr. Scanlin's is—we'll put in Section 1 as it originally was, without the word "and facilities" and add the following sentence thereafter: "So the soldiers' home at Columbia Falls to remain inviolate forever". Now we will discuss Mr. Scanlin's motion. Mr. Scanlin do you care to discuss it further?

**DELEGATE SCANLIN:** (Inaudible)

**CHAIRMAN GRAYBILL:** I'll let Mrs. Speer talk after I know that you're through with your motion, Mr. Scanlin.

(Inaudible)

**CHAIRMAN GRAYBILL:** Well, do you accept it? The Chair has to know what to do here. Do you want it changed that way now?

**DELEGATE SCANLIN:** No, no. (Laughter) Delegate Speer just withdrew.

**CHAIRMAN GRAYBILL:** Is there any discussion of Mr. Scanlin's amendment?

(No response)

**CHAIRMAN GRAYBILL:** Mr. Scanlin, does this mean that you accept the inevitability of war? Very well, is there any further discussion of Mr. Scanlin's amendment?

Mr. Swanberg.

**DELEGATE SWANBERG:** Well, Mr. President, I would oppose it for the same reasons that were outlined when I gave the majority comments. It was the majority of your committee's belief that every institution should stand on its merits, that it should not receive any artificial infusions or props by way of constitutional recognition. We give no constitutional recognition to any other institution here, and I see no reason why the Veterans' Home in Kalispell—or Columbia Falls should be propped up this way. There may come a time when it's most undesirable to have such a home. I can't really see that happening, but it could occur. Now I'm a veteran. I don't recall any great amount of pressure on me to come over here and support this. I have received some letters, but I don't recall any great amount of pressure. And I thought that we had got over this after the anti-diversion discussions that we had—discussions in other areas of the Constitution; I thought we had recovered from this fear of the numerous pressure groups around the state who were going to sack this Constitution if we didn't give in to them; and I think that's what we're doing here. It's my understanding that almost every time the Legislature meets, it considers this soldiers' home situation. Now these people are not disabled; they're just elderly, and they go up there and live. And I guess it is a pretty good deal for them, and I certainly don't hold it against them—it's fine and dandy. But bear in mind we are using public funds for this. The federal government has long since established institutions of a similar nature for the semi-disabled veteran; and while it may be desirable to recognize our veterans in this way, we must remember that we are considering public money on a very limited basis. I don't know what the capacity is—I think it's only 40 or 50; if I'm wrong, well, okay, I'm wrong—but it just doesn't seem to me that we should be giving this artificial recognition for this one institution. And so I would resist all of these amendments. But I would recognize the word "facilities", and I also, again, reiterate that Section 35 of the Bill of Rights Article does state that special consideration shall be given to veterans, so I think with those two provisions in there, it would actually be a long, long time before that home was ever abandoned, if ever.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, I rise and state once again my bias in this case as a member of the League of Women Voters. We did about a 4-year study on state institutions. I think all through this we realized that of all the institutions, the only one which had a group representing and lobbying for them was the Veterans' Home, and they would keep telling us that what they really needed was an alumni association, and somehow the institutions don't ever seem to be able to establish one. But I would think that, if we're going to consider institutions, we ought to consider special consideration for the aged who are in our institutions, the mentally retarded, those who—juvenile delinquents, and some of them who really aren't so delinquent, who are cared for in our institutions. I think each one of the institutions in this state has a hard time presenting its case. There used to be a time when they would each come individually to the Legislature and lobby for their own cause. I think that the Board of Institutions has done a great job, and I would give a lot more credence to this if the request came from the Board of Institutions. I don't think that they would come to us with such a request. And, you know, I thought, to begin with, this was somewhat of a facetious discussion; if it's not, I rise to oppose it. Even if it is, I rise to oppose it.

**CHAIRMAN GRAYBILL:** Mr. Siderius, you were next.

**DELEGATE SIDERIUS:** Mr. President, I'd like to read to you a paragraph out of a letter I think maybe more of you have received, but I'll read one paragraph out of there. This is from the Veterans Council of Flathead County, Kalispell, Montana. "We only hope the delegates to the Montana Constitutional Convention understand that the veterans of Montana have never considered our Veterans' Home as an institution. It is a home earned by the veteran, and he makes application to live there. People of all walks of life are committed to an institution. The veteran is not this type of person. There may be some, but they don't reside at the Veterans' Home at Columbia Falls, Montana." Now a copy of this letter was sent to Mike Mansfield, and here's his answer: "This will acknowledge the receipt of the resolution adopted by the Flathead United Veterans Council, petitioning Montana Constitutional Convention to provide for a permanent establishment in—of a Montana Veterans' Home. I am certain that the Constitutional Convention will give this proposal their serious consideration. As you know, it is a matter entirely under the jurisdiction of the Convention, but I certainly will watch their activities in this great interest. With best personal wishes, I am sincerely yours, Mike Mansfield."

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** I just wanted to clear up a couple of points. The federal government does contribute something—I think it's about $4 a day—to the veterans, and I think the cost of the home there runs about $8 per person, if I'm not wrong; it's right in there. And I think the—right now, they have about a hundred there. It's a building that was built a few years ago; it's one new building and the drawing board is ready for a 40-bed nursing home. Just so you get a little better picture of what it is there. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Would Mr. Rygg yield to a few questions, please, sir?

**CHAIRMAN GRAYBILL:** Mr. Rygg?

**DELEGATE RYGG:** I'll try.

**DELEGATE CHAMPOUX:** Mr. Rygg, if we accept your amendment, is it your feeling that the Convention should indicate by this acceptance that no institutions presently established in the state, especially the Veterans' Home at Columbia Falls, not be moved?

**DELEGATE RYGG:** Well, my particular motion didn't state it should stay in Columbia Falls. I said that's exactly what the veterans wanted. I don't think it means none of them could be moved. Was that your question?

**DELEGATE CHAMPOUX:** Yes. It is your feeling that all institutions presently established, should we—if we accept your amendment, should remain as they are?

**DELEGATE RYGG:** Well, I couldn't truthfully say that; no.

**DELEGATE CHAMPOUX:** All right. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Will Mr. Scanlin yield for a question?

**CHAIRMAN GRAYBILL:** Mr. Scanlin?

**DELEGATE SCANLIN:** Yes, sir.

**DELEGATE HOLLAND:** Mr. Scanlin, as I understand your amendment, if we run out of veterans, we still have to keep the Veterans' Home for the rest of the time the Montana Constitution is in effect; is this your intent?

**DELEGATE RYGG:** Mr. Chairman. Mr. Holland, I see no way that forever we're going to run out of veterans.

**DELEGATE HOLLAND:** God love you, I hope you're wrong.

**DELEGATE RYGG:** I hope so, too.

**DELEGATE HOLLAND:** I have this observation. There was one delegate proposal here which I didn't think considered—had enough consideration. That was Delegate McKeon's proposal that all of the various institutions remain where they are. Delegate McKeon living in a district that has all of them in them, I didn't, well, blame him. And I'm willing to go along with Mr. Rygg's proposal. I do think that—I do hope that someday that we will run out of veterans, Dan; but I think Sterling's would be probably more practical.

**CHAIRMAN GRAYBILL:** Mr. Scanlin, do you want to close?

**DELEGATE SCANLIN:** Mr. Chairman, Mrs. Eck has raised a very serious dilemma on my part. I didn't want to insist on a roll call vote on this matter, but I was hoping I could withdraw without being accused of being facetious; I mean I was half serious on this thing. Here we have a special interest being given special attention in the Constitution, and I object to that kind of a tactic; and consequently, I will withdraw my substitute motion and support the committee as amended by Delegate Swanberg and hope that that will satisfy the delegates of this Convention. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, Mr. Scanlin's amendment is withdrawn. The issue is now on Mr. Swanberg's amendment to add the word "and facilities" to Mr. Rygg's amendment, so that it says "such institutions and facilities as the public good may require". Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** Do you want to close, Mr. Swanberg?

**DELEGATE SWANBERG:** Just a few more comments, Mr. President. I think a lot of you members here are a little worried about the veteran vote, and perhaps a few of you may be thinking about the political aspects of this, but keep in mind, please, that we have a question of priorities here, as brought out by Mrs. Eck. Certainly it's a nice thing for our veterans to have this home—nobody argues that—but it's only for a very few veterans, really. I don't know how many are up there; I said 40 or 50, maybe 200. Out of the thousands of veterans we have here in Montana, only just a few hundred enjoy this home up there in Kalispell. Now, consider we're spending a considerable amount of money up there for this purpose. These people are not ill; they're simply elderly veterans who have received this special consideration. Think how much more desirable it might be used—if this money were used for a small home for the mentally retarded children. Think of the thousand and one real cases of need we have in this state for things of this nature which are not now being used, and then compare that with this home in Kalispell which, desirable though it may be, should not rank as high in order of need as some other needs which we have. And I hope when you consider this, you will vote in favor of this amendment. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Swanberg's amendment to add the word "and facilities" to the first line of Section 1.

Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman, I'm sorry that I've—Is Sterling Rygg's thing gone now?

**CHAIRMAN GRAYBILL:** No. it's not gone; it's second.

**DELEGATE BURKHARDT:** Okay. So all we're doing is adding "facilities" to the present language of the committee?

**CHAIRMAN GRAYBILL:** He's adding "facilities", and then after that, we'll have to consider what happens. But he substituted that for Mr. Rygg's.

**DELEGATE BURKHARDT:** Well, that sounds a little more palatable, yeah.

**CHAIRMAN GRAYBILL:** And then if his passes, we'll have to consider whether Mr. Rygg wants to continue his or redo it.

Mr. Aasheim.

**DELEGATE AASHEIM:** The motion was made by Rygg to amend, was it not?

**CHAIRMAN GRAYBILL:** The motion was made by Rygg to amend, and he amended by putting in a sentence in the middle.

**DELEGATE AASHEIM:** Mr. Chairman, I think the engine has jumped the tracks; it jumped the roadbeds going up the cowpath. (Laughter) I think that we must consider Rygg's motion first.

**CHAIRMAN GRAYBILL:** Well, now, Mr. Aasheim, I just take these as they come. And Mr. Swanberg made another amendment, and he made it in the form of a substitute amendment, which struck Rygg's and put back in his original one, with just the word "and facilities" added, as a substitute motion for Mr. Rygg's. Now if you want to reach Mr. Swanberg's, you may reach it either by—it doesn't make much difference whether you oppose or support the one to add "facilities". When we get the word "facilities" either in or out, then you'll be able to support or put in Mr. Rygg's again if you want to; but I have to take them as they come.

**DELEGATE AASHEIM:** Mr. Chairman, the motion was to delete. We're deleting the section, and as long as we're deleting, we can't be amending it.

**CHAIRMAN GRAYBILL:** All right. I'll go over it once again with you, as the Chair sees it. The motion was to delete Section 1 and add language, and the Chair has the language and so have you. Now the language happened to be the same as Section 1, with a parenthetical expression in it. All right, then we were considering that. Then Mr. Swanberg came along and made a substitute motion to delete Section 1 as Mr. Rygg had put it in and put his own back with the word "and facilities" in it; so we are on that now. Don't worry, Mr. Aasheim, you'll get a chance to amend it again if you like.

**DELEGATE AASHEIM:** I'm not worried; I'm just trying—I'm just trying to see—to keep Mr. Rygg's in proper perspective. And I think that we are really off the track when we're not considering Rygg's first. That's my point.

**CHAIRMAN GRAYBILL:** Well, when Mr. Swanberg comes up with an amendment after Mr. Rygg's hits the floor, what is the Chair to do? I can't refuse Mr. Swanberg's amendment. It was in order. Therefore, the issue, my friends, is on Mr. Swanberg's amendment to add the word "and facilities" so that it reads "Such institutions and facilities as the public good may require shall be established and supported by the state as may be prescribed by law." Now, so many as are in favor of Mr. Swanberg's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** So many as are in favor, vote Aye on the voting machines; and opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, 65 having voted Aye and 24 having voted No, Mr. Swanberg's motion passes. At the moment the section, then, reads "Such institutions and facilities as the public good may require may be established". At the moment, Mr. Rygg's motion is gone; but, Mr. Rygg, you or Mr. Aasheim have the right to remake it.

Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman, I would like to insert the same thing, the parenthetical line in—after "facilities". "Such institutions and facilities, including homes which may be necessary and desirable for the care of veterans".

**CHAIRMAN GRAYBILL:** Very well. Mr. Rygg's motion is renewed. After the word "facilities", he would then add the phrase "including homes which may be necessary and desirable for the care of veterans". You'll find the language parenthetically in the language he put on your desks. Is there discussion?

Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, I'm happy with either one. It makes no difference to me, as long as we get the engine back on the track.

**CHAIRMAN GRAYBILL:** It moves about

as well over ground as over rails, Mr. Aasheim. (Laughter)

Mrs. Pemberton.

**DELEGATE PEMBERTON:** Thank you, Mr. President. I would like to go on record as supporting Mr. Rygg's amendment.

**CHAIRMAN GRAYBILL:** Very well. You have before you Mr. Rygg's amendment, which is to add the phrase "including homes which may be necessary and desirable for the care of veterans" after the word "facilities".

**UNIDENTIFIED DELEGATE:** Roll call, Mr. President.

**CHAIRMAN GRAYBILL:** All right, we've asked for a roll call. It would read "Such institutions and facilities, including homes which may be necessary and desirable for the care of veterans, as the public good may require shall be established and supported by the state as may be prescribed by law." All those in favor, vote Aye; all those opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Absent |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Absent |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Excused |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Nay |
| Erdmann | Absent |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Absent |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Absent |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |

| | |
|---|---|
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CHAIRMAN GRAYBILL:** Will the clerk announce the roll—the ballot.

**CLERK SMITH:** Mr. Chairman, 71 delegates have voted Aye; 18 have voted No.

**CHAIRMAN GRAYBILL:** 71 voted Aye and 18 voted No, Mr. Rygg's amendment is passed, and we now have both "facilities" and the phrase "including homes" and so forth in. Is there other material—or other discussion of Section 1?

(No response)

**CHAIRMAN GRAYBILL:** Very well. Members of the body, you have before you, upon the recommendation of Mr. Swanberg that when this body does arise and report, after having under consideration Section 1, as amended, that it recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Section 1 is adopted as amended. Mr. Clerk, read Section 2, please.

**CLERK SMITH:** "Section 2. Assistance. It shall be the duty of the Legislative Assembly to provide economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities or misfortune, may have need for the aid of society." Section 2, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President, I move that when this committee does arise and report, after having had under consideration Section 2 of the Institutions and Assistance Article of the Public Health, Welfare, Labor and Industry report, do recommend that the same be adopted.

Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Now, this section will be found on page 27 of the yellow book, and the old section stated that the several counties of the state shall provide for the care of their indigents. This section, as you see, states that the Legislative Assembly shall provide for their assistance. Beneath this rather innocuous-seeming change will be found a social phenomena and of rather profound significance. And I'd like to take it up at some length here, to give you a little background. When our committee met to consider this, in connection with another proposal, we had a joint meeting with the Bill of Rights Committee, and at that hearing some testimony was taken about the aid to dependent children sector of our Public Welfare Department. I might point out, here at the beginning, that it is this sector—the aid to dependent children—where the vast majority of the public welfare funds go. The other funds—aid to the blind and needy, the lame, and so on—while they're considerable, are not to be compared with the money that's spent for this aid to dependent children. And in the course of this hearing that we had with the Bill of Rights Committee, it became evident that these costs were rising at a rather astonishing rate; and if you will look at the graph that you have on your desks, you will see the extent of this rise. In 1960, for example, the number of families who were receiving this aid was under 2,000, and in 10 years it had risen to 3,000; and then in 1970, from 3,000, to the end of '71, it had almost doubled to 6,000. And some of the witnesses who appeared at that hearing were asked, what was the reason for this phenomena? It was close to 5 o'clock, and so we didn't get an answer to the question, although I'm quite sure that most of the witnesses there knew what the answer was. And so, to get a little perspective on this, I'd like to take you through a little bit of time and then make a few comments when we get through. Let's go back to 1930 and look at the number of births at that time, 200—2,203,000 in 1930. Now, 1930 was on the eve of the Depression, as you all recall, and all during the Depression our birth rate was abnormally low. In 1932, as a matter of fact, in the depth of the Depression, it got down to barely just above 2 million people. In 1935, it was not much better, 2,155,000 people; and even in 1940—the Depression was just kind of getting over—there were still only 2,660,000 people born that year. Then, in 1945, the veterans came back from World War II, and I might state that he was appalled at the sorry state of our birth rate. Now he postponed those dreams he had long had—those week-long fishing trips, those pleasant evenings at the bowling alley, and those cozy hours before the fire with the old stamp collection—and proceeded to do something about the birth rate. (Laughter) The women of our nation responded with magnificence, although I suspect they were somewhat startled, at first, by all the sudden interest in this field; but by 1946, scarcely a year after the war was over, our birth rate had risen to 3,288,000 people; and by 1950, it was up to three and a half million. So we had a rather sudden shift from an abnormally low number of births to, all of a sudden, an abnormally high number of births. By 1955, the veterans were still at it, and the number of births in that year was 4,047,000. Now 4 million births, my friends, is almost double what it was back in 1935 or thereabouts. Now, that's an astonishing increase in people, and it had an astonishing increase—or I should say, an impact on our economy. All of you remember those frantic years when schools had to be built to take care of this sudden onrush of people. What is not so generally well known, although I think many of you do know it—that this had an astonishing impact on business, and companies which were once obscure and unknown suddenly found themselves in the bigtime. We need not go into that in any detail here, but I do want to point out, as reinforcement of a point I wish to make later on, that such companies as those who made baby food suddenly found themselves big corporations. And this phenomena had about it all the certainty of a depot schedule, a train schedule. You could have only looked at what was happening to business to know what was going on in the birth department, because this growth went from baby food to schools, and schools meant bricks and cement and iron and steel—it meant desks, and companies like International Desk Company, International Textbook Company, McGraw-Hill, all of them obscure companies at one time, suddenly found themselves large and flourishing. Then came phonograph records; and we now see that these children are getting into their teens, and we have sporting goods, musical instruments, the Honda—and how we remember the Honda and how it took over the country, just about the time these kids were getting to be 15 and 16 years old. Then about 1965—if you'll take 20 years off 1965, you reach 1945—and we see that is just about when the birth rate, the number of births, began to increase. In 1945, the next thing that this mass of people became involved in was marriage and, as an inevitable consequence, they became involved in divorce. This, then, is the reason, I submit, for this large increase in the number of families who have aid to dependent children, as shown on this graph; and I submit that it will get worse—much, much worse—before it gets better. The city of Great Falls, at this time, is broke in its welfare fund. This situation is going to continue in the months and the years ahead. If you will look at the chart, on the other side of this thing, you will note that in 1966—and I will use Cascade County as an example—there were 933 children in Cascade County receiving welfare support, and just 5 years later, that number had risen to 2,355 children. You will see that, in terms of expense—I'm sorry, the expense is not stated for 1966, but it is stated for the month of September, 1971, for Cascade County—and as you will see, we spent the sum of $139,995 for that month. On a statewide basis, the number of children on aid to dependent children rose from 6,598 in September of 1966 to 14,387 just 5 years later, in 1971. Now, I've got to give you some figures here—and they're only estimates—but in 1971, we're dealing approximately with those children who were born in 1951 and now getting married, and at that time there was a birth of three and a half million people. Let us go ahead to 1982 and go back to 1962, or '61 or thereabouts, and at that time, there were 4,268,000 children born. The point I'm trying to establish here is that we are just now coming into this large increase in births, insofar as marriage and divorce is concerned, and it's going to have its inevitable impact upon the whole welfare philosophy. The money we spent in September of 1971 for aid to dependent children alone, and this is at the rate of $40 per month, was $788,067 on a statewide basis. I leave it to your imaginations to ask yourself how many schools this would have built, or how many institutions this might have built. Cascade County, with this kind of an expenditure, could have built a school and paid cash for it in 1950. It's not the money, though, so much—the money is critical, but it's not entirely the money, because, with 14,000 young kids disenfranchised, if you please—children of broken homes, mostly; getting $40 per month for their care and support, living in substandard conditions, mostly with inadequate clothing and inadequate food—the medical care, however, being excellent because it's paid for by the state—I submit that we have a rather serious wound in the body of our society, and I seriously question whether a bandage made of money is going to solve it. This is too many people to grow up under such conditions. Now, Mr. McCarvel and I were on a subcommittee that considered this, and we had several heart-to-heart talks, you might say, with Mr. Carkulis of the Public Health, Welfare and Labor Department—or—the Public Health Department, I'm sorry—and I might add, at this point, that I have rarely seen a more dedicated man and a more knowledgeable man—and the report which he issues monthly that summarizes the activities of the Public Welfare Department is, in my opinion, a minor masterpiece in statistics. Any of you people here in the body who are interested in this subject owe it to yourself to get a copy of this report and study it. The page which I submitted to you is a part of that report. And Mr. McCarvel and I asked ourselves some very searching questions, and, like most people here in the delegation when they had their committee work before them, we must confess we didn't sleep too well. We thought and thought about what we could put in the Constitution that might go to solve this problem, and, frankly, we didn't come up with anything. We had some ideas. I have an idea. It's not a constitutional idea, but I believe that this Constitutional Convention, in addition to working on a Constitution, should also serve as a forum for the debate and consideration of our more-pressing social problems, and I submit that this is one of them. And the idea that I would like to throw out for just general consideration—I don't necessarily endorse it, it's a concept that's been in use in England for centuries; again, England has preceded us a little bit, or anticipated us—and that's the doctrine of the boarding school. If I thought we were getting our money's worth—$139,000 worth every month—I wouldn't feel so bad, but I don't think we are. And I submit that I don't think we can allow 14,000 children in this state to grow up largely unsupervised in substandard conditions, with very little training in citizenship and esthetics and morals and all the rest of it that a solid home should provide. These kids are just not getting it. I submit it's a litter of a sort; it's children that have been—well, it's not abandoned, but almost—by people who, for one reason or another, have decided to forsake their obvious responsibilities. The boarding school concept in England has long been in effect and has long been successful. It would cost hundreds of thousands of dollars to start something here, but a pilot program could get started. And here we'd have a real chance to get something for our money, and those kids would have a real chance to grow up to be useful citizens. They'd get good food; they'd get a good bed; they'd get good supervision from trained sociologists and psychologists. And here again I might say a few kind words for the Welfare Department; they do have this kind of personnel, but I suspect that they're largely frustrated by the system under which they have to work—$40 per month per child. Some would say, "Well, this is depriving the mother of her children." I think the mother, once she saw what the child was getting, would be glad to have this happen. She could then put her children in a home where she knew they were going to get some kind of care and go out and get herself straightened around. She could find a job, she could improve herself by going to school, and then go back and get her children and take them back. As it is now, most these kids get a divorce after about age 22; they have no particular skill; they're dazed; the divorce hits them; she goes and gets herself a job as a waitress; she goes and gets a job as something in a hospital; then she hires a babysitter to take care of her children and most of the money that she gets from the Welfare Department goes to pay the babysitter. So, as a consequence, we have these children being raised largely by babysitters and mothers who can't quite provide. Now getting down to the section involved, after these brief remarks; we changed the old Constitution—which stated that the county shall provide—to a provision that states that the Legislature shall provide. We did this because the evidence that we gathered at our hearing showed that these children and their mothers tended to congregate in the larger cities; they did so, I suppose, because of better job opportunities—that would be my guess. In the case of Great Falls, they might also do this because we have a county hospital there which provides pretty good care in this field. And if you'll notice on this sheet again, I circled some of the larger cities in Montana, and if you'll go down those, you'll find your own city and you will find that in the cities I circled, in 1966, they constituted 44 percent of the total. The cities I circled were Great Falls, Kalispell, Bozeman, Helena, Missoula, Butte and Billings. There's a few others I could have added, but I just stopped at that number. And then, if you'll go to 1971, you'll see that the figure is 52 percent of the total, indicating, together with the other evidence which we took, that this migration does occur. Now, the figures alone, I will concede, don't show that. You could conclude from the figures alone that the people in cities were just getting divorced quicker, or more frequently, than the children in the smaller communities. But the evidence which we heard from Mr. Carkulis and the evidence which we heard from Mr. Ed Shubat, who is Cascade County Commissioner, stated that this migration phenomenon did occur. I'll call your attention to Chouteau County, which is Fort Benton, and you will note—it's right under Cascade County—you will note that in 1966 they had 58 children on the ADC program, and in 1971 they had only 48. Now Fort Benton is only 40 miles from Great Falls, and I think what's happening is that the children in Fort Benton and their parents are moving into the larger centers. If you'll take some of the smaller counties, you'll show that—you'll see that that same phenomenon holds true. Teton County, which is Choteau, 56 miles from Great Falls, had 39 children on ADC in 1966, and in 1972 they had only 32 children. You'll find this throughout the report, that in spite of quite a considerable increase in the total number of children on ADC, from 6,598 in 1966, to 14,387 in 1971, still there are quite a few counties here, the smaller counties, who show a decrease. And we submit that this is why it's so. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Is there discussion of Section 2?

Mr. Monroe.

**DELEGATE MONROE:** Mr. President, I rise in support of Section 2, the majority report of the Health, Welfare, Labor and Industry Committee. I think they did a fine job, and I would hope this body supports Section 2.

**CHAIRMAN GRAYBILL:** Is there other discussion?

Mrs. Reichert.

**DELEGATE REICHERT:** I, too, rise in support of the committee proposal, but I would like to ask Mr. Swanberg to yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE REICHERT:** In the course of your committee discussion, did you consider the responsibility of the federal government? Since ours is a nation of mobility, what do you—how do you feel the federal government is going to enter into this revenue sharing picture as far as welfare is concerned?

**DELEGATE SWANBERG:** I'm glad you asked that, Arlyne, because I forgot to cover it in my comments. The federal government is now participating in this program. They contribute two-thirds of all funds going for the aid to dependent children, and of the remaining one-third, the county puts in one-third and the state puts in two-thirds—if you can figure out this arithmetic. It winds up to where the county provides about 10 percent—10 to 11 percent of the total money going into the aid to dependent children program. The welfare levy under the statutes is now a maximum of 17 mills, and once that 17 mills is reached and—excuse me—then that 17-mill basis is used to secure the federal and state participation. I might add, in this connection, that the federal government is also groping with this problem. There's a bill in Congress at the present time to guarantee every family in the United States—a family of four—$200 a month. It's passed the House and it's now being considered by the Senate. For the reasons I have just stated, I don't think that's the solution. It seems, in this welfare field, that the more we try to do, the worse it gets. The easier we make it to get a divorce, the easier we make it to—so that the children will be cared for, the worse the problem becomes. There has to be, in my opinion, some other solution.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. President. I think it would be nice if we'd hear from people outside of Cascade County, but I don't want to waste any time in adding my approval. I actually had hoped that the committee would place the entire responsibility for the care of the indigent on the Legislature, simply because of this Supreme Court ruling which has now knocked out the residency requirement for welfare, and we get people not only from other counties but from other states, and they do all seem to flock to Cascade County because of our fine health department and our convalescent hospital, I believe. But it is no longer fair for the taxpayers of a county like Cascade County to assume this staggering burden, when they can come in from anyplace from the outside. And I do believe that the committee is to be congratulated at least in placing this burden instead of on the county, to the discretion of the Legislature so that it becomes a state obligation, largely. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, I have a couple of questions. I guess I'd like to direct them to Mr. Swanberg, if I may.

**CHAIRMAN GRAYBILL:** Mr. Swanberg, will you respond?

**DELEGATE SWANBERG:** Yes, Mr. Furlong.

**DELEGATE FURLONG:** I have to confess my ignorance; I'm not just quite sure how the present state law works. But you mentioned 17 mills, I think, is now the maximum on the state. Do all counties automatically have to levy 17 mills?

**DELEGATE SWANBERG:** No, they do not. Great Falls levies the full 17; Anaconda levies the full 17; I think Butte does; I think Kalispell does. Many of the smaller counties maybe just levy just a couple of mills, and when they levy that 2 or 3 mills, let's say, that gives them the right to secure matching federal and state funds. Does that answer the question?

**DELEGATE FURLONG:** May I direct another question?

**CHAIRMAN GRAYBILL:** Mr. Furlong?

**DELEGATE SWANBERG:** (Inaudible)

**DELEGATE FURLONG:** Do I understand you correctly, now, that whether you levy the mandatory 17 mills or not, if you levy any portion of the millage, that you, in fact, then participate equally with the counties who levy the 17 mills for federal and state support?

**DELEGATE SWANBERG:** You levy to the extent of the money that you levied. In other words, if you levied 3 mills and produced, say, $30,000, the state will kick in on top of that another $20,000, roughly, and then the state—or the government will kick in some more. But after you have exhausted that, you can't get any more federal funds; you've got to then go and make an emergency levy. The county would have to exhaust their 17-mill allowance before they got any more money from the government. Am I clear here?

**DELEGATE FURLONG:** I'm sure you're clear; I'm not quite.

**DELEGATE SWANBERG:** If a county, let's say, levied 5 mills for the Welfare Department and then ran out of money—now if they levy the 5, they're going to get matching funds on that 5 mills, on the percentages that I've mentioned—and then if they run out of money, they then have to have an emergency levy in the county, because, you see, they've only been levying 5 mills. They might conceivably have to go on up to the full 17. They have to make that emergency levy, and then that fund will also be matched. Now in the case of a county that's already at the 17-mill maximum, they just get grants from the state to take care of the deficit, because they're already at the maximum and there's nothing else they can do but make a statewide contribution.

**DELEGATE FURLONG:** I'd like—May I ask another question of Mr. Swanberg? Will you yield?

**DELEGATE SWANBERG:** Yes.

**DELEGATE FURLONG:** I'll just pick one at random here for my benefit; since I used to live there, I'll pick it at random. I see Liberty County, for example, in 1966, had nine children, three families, and now, in 1971, it's six and two. I have no idea what welfare they actually—or, I'm sorry, what mill levy they actually have in Liberty County. I am aware, however, of the fact that the county has bonded itself for a county hospital for—certainly not for the aid to dependent children, but for the elderly in the county. Now, as I understand what you're suggesting here, it would, in fact, then be a statewide levy which would go into a general fund and then would be distributed on the basis of—well, is it—conceivably, then, the people in Liberty County could be paying a considerable welfare which would actually be funded into such areas as Cascade and Kalispell, Flathead, et cetera?

**DELEGATE SWANBERG:** Make no mistake about it, you residents of the smaller counties, this is going to raise your taxes; there just isn't any shadow of a doubt. To be able to be—We have left it up to the Legislature to fix the levy; now they can do anything they want. They may leave it as it is, but I doubt it. I would, rather, be inclined to think that now that we've removed the 2-mill limitation, they'd put on a statewide levy of we don't know how much—3, 4, 5 mills, perhaps; maybe more—and this will raise the property taxes in the smaller communities to finance this welfare program.

**DELEGATE FURLONG:** Mr. Chairman. I'm—

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** I'm in complete sympathy with the problem. I think my problem is that I'm not in sympathy with the solution. I stand opposed to Section 2—the Assistance. Perhaps I wouldn't if I knew more about it, but as it's been explained to me right now, it looks to me like a statewide levy—many counties are going to begin to pay considerable amounts of money to levy for problems which they might, in fact, not have helped create. I stand opposed to Section 2. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Will Mr. Swanberg yield, please?

**CHAIRMAN GRAYBILL:** Mr. Swanberg?

**DELEGATE SWANBERG:** Yes, Bob.

**DELEGATE KELLEHER:** Bill, if a divorced mother, say with three children, left Conrad and moved down to Great Falls because the—of the Supreme Court removal of the restriction on residency requirements, I understand that she could demand, under present law, immediate ADC aid; is that right?

**DELEGATE SWANBERG:** That is correct. The—Go ahead.

**DELEGATE KELLEHER:** Now, another question, if I may.

**CHAIRMAN GRAYBILL:** Mr. Kelleher, go ahead.

**DELEGATE KELLEHER:** May I, Mr. Chairman? Could your County Attorney in Cascade County sue the County Commissioners under either statutory law—under any Montana statutory law or be under case law and sue the County Commissioners of Pondera County to reimburse Cascade County for the money that you spent supporting those three children?

**DELEGATE SWANBERG:** That isn't the way it works. Most of the time that woman—that wife or ex-wife with three children—is going to make a permanent move down to Great Falls, and once she's done that, there is no particular residence requirements established; she doesn't have to live there any particular length of time any more—

**DELEGATE KELLEHER:** Yeah, I know that.

**DELEGATE SWANBERG:** —she's on welfare right now, and there is no recourse against Pondera County.

**DELEGATE KELLEHER:** There is none whatsoever—

**DELEGATE SWANBERG:** No.

**DELEGATE KELLEHER:** —that Cascade County can recoup that money?

**DELEGATE SWANBERG:** No.

**DELEGATE KELLEHER:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, I think that maybe I could help Mr. Furlong here a little. I might state, for the benefit, last year—and this is 1971-72—Cascade County levied 17 mills, Deer Lodge County levied 17 mills, also Silver Bow County. Now if you want to know what Flathead levied, Flathead County levied 5.56 mills. When you start looking at this book, Mr. Chairman, it's—this is why I have been a little bit bothered about the statewide levy, when I see we go from some counties from—I believe there's two and a half mills—3 mills is the lowest, that's in Carter County—up to these three. Now, as Mr. Swanberg has stated, you cannot get any funds from the State of Montana until you levy the 17 mills. Now, Cascade County is coming in on the 15th day of next month—this was in the *Great Falls Tribune*—to start to get some of the state funds to handle over—to carry them over till the next July first. Now this committee up there had this discussion whatever—a long time, and we debated whether we would make it a state responsibility or we would leave it to the Legislature to make the decision—so maybe we ducked, maybe we didn't; but this committee decided we would leave it to the

Legislature and take it away because it was—we were getting into trouble in a county responsibility. Now this does not mean that the Legislature has to levy a statewide levy; if we'd of made it a state proposition, then I think we would have had a statewide levy. We thought maybe we would leave some to it. Now what this is going to do to the revenue proposal of—which we have received; with the unlimited statewide levy, this could be quite a thing, Mr. Furlong. That's all I have to say on it.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, I'd like to thank Charley for helping me. When he first started to help me, I was a little bit worried. (Laughter) I would like to direct a question to Mr. Mahoney, if I might.

**CHAIRMAN GRAYBILL:** Mr. Mahoney?

**DELEGATE MAHONEY:** (Inaudible)

**DELEGATE FURLONG:** I want to be sure I understood you correctly. Since you used Flathead County, I'll use it also. You say they levied five point five-tenths mills. Now did you say that they do not come in for state share?

**DELEGATE MAHONEY:** They—what we have—and I think what you're missing here—there's a special fund set down here that the state for divide up with the counties if they run out of welfare money; but the first prerequisite says you must levy 17 mills in order to get it. You couldn't get one cent of that. Now here's what happens. This does not affect ADC, aid to dependent children, and that. This is extra welfare money that they get—the state has a fund of—about $250,000 is held back and set off to the side to aid assisting counties; but the first prerequisite, 17 mills. So this limited here. Now—I think there is an error here, but I believe Mineral County has—is also 17 mills. I think that Mineral County—we've had some problems in Mineral. Does that answer your question?

**DELEGATE FURLONG:** Yes, thank you.

**CHAIRMAN GRAYBILL:** Mr. Anderson, you were up.

**DELEGATE OSCAR ANDERSON:** I was going to clear up that difficulty Mr. Furlong was having. And Liberty County is levying, currently, 5 mills. But I would like to direct a question to Mr. Swanberg. Will you yield, sir?

**CHAIRMAN GRAYBILL:** Mr. Swanberg?

**DELEGATE SWANBERG:** Yes.

**DELEGATE OSCAR ANDERSON:** Do you feel that this is a mandate for the Legislature to institute a statewide tax for equalization of the welfare total costs?

**DELEGATE SWANBERG:** No, I do not. I—

**DELEGATE OSCAR ANDERSON:** Would you yield for another question, Mr. Swanberg?

**DELEGATE SWANBERG:** Yes, go ahead.

**DELEGATE OSCAR ANDERSON:** Does the Legislature at this time have power and authority so that they could—say, for instance, someone from Richland County, my county, if they moved to Cascade—that they could pass a bill back for Cascade, even in view of the residency requirements that have been declared unconstitutional?

**DELEGATE SWANBERG:** There is no provision for that at the present time. And that used to be the law, but people move around so much these days—that's the problem—that you can't pin them down.

**CHAIRMAN GRAYBILL:** Mr. Anderson—

**DELEGATE SWANBERG:** As a consequence, the Welfare Department is recommending, and your committee is recommending, that some kind of a statewide financing program be instituted. Now whether part of it's county and part of it's state, or whether it's all state, we don't know.

**DELEGATE OSCAR ANDERSON:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I want to point out, for the record, clearly a distinct difference between the majority proposal and our present Constitution. Article X, Section 5, of the present Constitution says, "The several counties of the state shall provide as may be prescribed by law for those inhabitants who, by reason of age, infirmity or misfortune, may have claims upon the sympathy and aid of society." The majority proposal establishes a constitutional right to a claim for the same necessary services, for the same economic assistance and social and rehabilitative. The key to it is, quite obviously, found in the comments on page 14, where they indicate the Legislative Assembly shall decide whether it will be a county levy or a statewide levy. This is legislative in nature and ought not to be in this Constitution. Our present Constitution has a permissive "may", where this is a mandatory. I move to delete Section 2, Assistance, from the article on Institutions and Assistance.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Your motion is to delete it?

**DELEGATE McNEIL:** That's correct.

**CHAIRMAN GRAYBILL:** Very well. Mr. McNeil has a motion to delete Section 2 in its entirety.

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I'll be brief. It's the same reasons that we deleted the several other paragraphs from this committee report. At page 5 of the comparison of the Montana Constitution with the constitutions of selected other states, no other state with which Montana's Constitution was compared had a comparable section, for the obvious reason that it is legislative. And I'll say nothing further.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Speaking as an individual and not as a member of the committee, I would state that I have no objection to this deletion. I would simply point out, however, that it would remove the present situation, which now calls for this assistance to be instituted on a countywide basis; and since I am in favor of eliminating that, I would have no objection to deleting this whole section and leaving the entire problem up to the Legislature.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. Chairman, as one who might have a special interest in this particular section—as many of you now, I at least have been a social service worker and have some experience in the field of working with indigents—I don't know what to say about the conversations that have gone on here and the dialogue; I think they have gotten somewhat off base. Certainly all of us in the State of Montana recognize that there is a certain segment of our society that is, in some respects, unable—due to infirmities, as they mentioned here, or misfortune, age, or what have you—unable to provide for themselves. And I think maybe the question we are asking ourselves is—we're getting down to a lot of nitty-gritty dollars and cents things; I'm not saying we should neglect that, but I'm not sure we should make that our paramount topic of discussion here. Certainly if their services, social and rehabilitative—if they're going to be provided, they're going to have to be paid for; and we've talked about who was going to be paying for them. What we're suggesting in Article II is that the Legislature provide a system for economic and social and rehabilitative assistance and services. And as we see the migration from the, let's say, rural areas to the urban areas to take advantage of, maybe, some of the benefits that are available in urban areas, such as medical and what have you, it's rather unfair, maybe, that the urban areas would have to take the responsibility on of levying the 17 mills and request the state for further assistance; and maybe a rural county that doesn't have some of these services available, that they would not have to levy the 17 mills. So I guess what I'm saying is that those people who cannot otherwise provide for themselves is the responsibility of society. I don't think any of us would disagree with that. And so, the responsibility should lie with the state; and I would resist any motions to maybe, delete this section. I think the responsibility should be with the state, that we should all share in this problem of society. It's probably not going to get much better. We do have unemployment problems; we have economic problems; but the alternative to not making the state responsible for some of these things and not us taking the responsibility is much grimmer. If people are not offered these services that they need, or inadequate services, then it seems to me we create much larger social problems; and I don't want to face those consequences. So, in view of the fact that more federal aid is going to be coming in this area, hopefully, and, hopefully, we affirm the majority report of this committee to keep this section in, I think this body should take this responsibility, hand it to the state and they be responsible for this social and rehabilitative services. I urge you to keep Section 2, as it is recommended by the majority, in our Constitution. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. I must say that I read the thrust of this section quite differently, maybe, than Mr. Swanberg, who I thought was quite quick to be willing to delete it. Here's the point: I have two other articles that we have finished, one on—in the field of education—and remember our original language in all reacting to the work of the Supreme Court. This original language, before we changed it: "It shall be the duty of the Legislature to provide, by taxation and other means, and to distribute in an equitable manner, funds sufficient to insure full funding of the public elementary and secondary school systems." There was a definite trend or philosophy in that article that there was a shift from local responsibility to state responsibility in the field of education. Then, when we got to Revenue and Finance, we talked about, the state respond—the state shall appraise, assess and equalize. What I saw happening in the Convention, in those two articles, was a move away from the local and county dealing with those things, to a state-equalized program. And I would read this article in the Public Health and Welfare as following that same trend and therefore to be considered rather seriously. That's the trend we're setting up, then I would say, by way of consistency, that's the way it would be. And I—if I read the recent Supreme Court decisions, I think taxation, education, welfare are all going in that direction—and that I saw this as a response to that direction; therefore, I would—I'm not saying not to delete it, but I'm saying, "Let's not delete it without some careful consideration of the trend that we're setting up in this whole Constitution." And I think it bears a lot of serious thought here, more than just sort of a casual taking care of it.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, as this rolls on here, I—it becomes more obvious to me that I must support the McNeil amendment, and I have my reasons. I took off of this chart a little bit here that Yellowstone County has 761 families on welfare, Silver Bow has 447, Missoula County has 488, and Cascade has 964. Now I'm representing five counties in eastern Montana, which is over 10 percent of the state; Treasure County has 6 families, Rosebud has 140, Garfield has 4 families, McCone has 4, Prairie has 5. I think perhaps our solution would be to secede from Montana and join North Dakota and let these counties of Cascade, Yellowstone, Silver Bow and Missoula have all their welfare residents and take care of them. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Do you so move, Mr. Kamhoot? (Laughter)

**DELEGATE KAMHOOT:** I'm going to hang on just a little while longer, Mr. Chairman; thank you.

**CHAIRMAN GRAYBILL:** Some of us might call your bluff—that's my point.
Mr.—Mrs. Eck, please.

**DELEGATE ECK:** Mr. Chairman, I don't have the chart in front of me right now, but I know that, from looking at similar charts, that Gallatin County has been one where the welfare load has been low and our millage has been low for welfare. I also know that people who are in need from Gallatin County—and I would guess from most other counties with low welfare loads in Montana—those who are in need might struggle for a few months, or maybe even a year or two, in Gallatin County, but it won't be long before they realize that things are really better for them in Cascade County. If they have—if they are in need of a special kind of medical attention, if they have special handicaps, if they are in need of job training, all of these things—our county is not equipped to deal with welfare people or people in need of any kinds of special services,and I think that there are very few counties in Montana that are equipped to deal with them. So far as our taxpayers go, it's great that they all move to Cascade, but I think that there are a great number of people who—in Gallatin County who, for a long, long time, have felt a bit guilty about this. I think that by far the best thing for these people to do is to move to Cascade County, but I think that our people should share in the care that these people require, and the best way for us to share is through letting the State Legislature decide how we are going to share in it. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I should be the last one getting up here defending this, because, in looking over my district, we're not so high. But I think we have to realize that we went out here and said, "We want schools financed statewide; we want to go out here and find everything else done"; but when we come to welfare—Now, I'm sure that I can look at some of these with—I can take a county in eastern Montana—I'd just as well name it, Petroleum County—has no hospital; they have nothing to take care of their people; they have—and they have a very nice, cheap mill levy. Now, in the county I came from, in Garfield County, they had a hospital, they tried to do something, and this has cost some extra money. Now, if we're going to turn around here—that is one state—and I know that we have problems, because Butte, Anaconda, Great Falls are in a different line of occupation. Now if we want to close those cities down, that's one thing. But I listened to the County Commissioners from Cascade County, and they came up there. We had Mr. Carkulis, the welfare man, up there. We had a number of people discussing this issue with us. At the time—and I'm sorry to see some of the committee now is changing—at the time we came out, we agreed to this proposition, that we knew welfare was a statewide problem, because the days of going by horseback is over. We've only got a few minutes by automobile to cross the county line. Now, all right, we heard this—and I don't know how much truth about it—that they congregate in Great Falls. They maybe do better. Maybe—It reminds me, and I shouldn't say this, but another little Russell story—and I love the man, he's done a great thing—he told about a restaurant at Shelby. He said this was the greatest place in the whole Northwest. He said all the flies come and wintered there in the winter; it was the best place to winter. Well, I think maybe it is a little better in Cascade County, but let me say this: We have a welfare department; they are selecting these people under law; then the County Commissioners have very little to say about welfare. This has been the Legislature that's done this. Now I think the time has come that—I know some of these counties—I'm just looking at one here—three mills, Carter County. The next one is Cascade, it's 17. Now, I know, in Carter County—and I love the county; I sure got a lot of friends down there—but is Carter County asking some other county to furnish the hospital? Is Carter County going out here and asking, like Petroleum County, some of the welfare needs? Are we going to find all of our old people having to leave to go out there where they do maintain a hospital? And these cost money. And I think we should realize that this is partly a legislative proposition. We did not say "state"; we said "Legislature shall determine". If we leave this out entirely, I would question—I think we would be doing a disservice. Even in the old Constitution, they recognized there was a point for these people, indigent people, people through no fault of their own—I think we have this to realize, and I would certainly hesitate to see this section taken out; maybe it could be amended. But please remember this—if we're going to have education statewide, and this seems to be what you agreed on yesterday, I think welfare has the same privilege in this state.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, as a supporting member of the majority report on this particular section, I think the so-called "big counties" have been picked on long enough. Take a look at Big Horn; take a look at Glacier; take a look at Hill; take a look at Lake; take a look at Lincoln County; take a look at Roosevelt; take a look at Rosebud and Valley. Now these are not metropolitan centers, but our problem is their problem, too, and it can only be solved through the adoption of, this Convention, Section 2. And I stand by the majority report.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, I'm sorry, but I really am lost. And I must know if we're debating the merits of statewide welfare financing versus county and state welfare financing—is that what we are debating?

**CHAIRMAN GRAYBILL:** Are you addressing that question to the Chair?

**DELEGATE BOWMAN:** To anybody who can answer it.

**CHAIRMAN GRAYBILL:** Well, the committee report in Section 2, says that the Legislative Assembly—which of course, is the state—shall provide economic—such economic assistance as is necessary—

**DELEGATE BOWMAN:** Right.

**CHAIRMAN GRAYBILL:** —and the present Constitution involves the counties. And Mr. Swanberg has made it clear that, while they didn't assign the duty to the state, they're leaving it open under Section 2 to the State Legislature, whether to have it statewide or countywide. I don't think we're determining; we're giving the power to the Legislature. Now if any members of the committee think I have misstated the section, please speak up. But that's what I understand. We aren't moving it from county to state; we're moving it from county-oriented to Legislative, which could go either way. We are liberalizing it.

**DELEGATE BOWMAN:** Well, then, could

I make an observation? Would that be in order?

**CHAIRMAN GRAYBILL:** Well, if you can squeeze it into any of the narrow concepts of debate that you've heard expressed here today. (Laughter)

**DELEGATE BOWMAN:** That's what got me confused; they're so narrow it's hard to find a place to talk.

**CHAIRMAN GRAYBILL:** Would you like us to come back to you, Mrs. Bowman?

**DELEGATE BOWMAN:** No, no. I'll regain my composure; I'm sorry. Okay. Now, the way I read it, it says that the Legislative Assembly is going to provide economic assistance. To me, that means that the state is going to do it. And it seems to me that if you want to let this be a joint effort or let the Legislature decide how it's going to be, then you have to insert the word "for" between the word "provide" and "economic". And I'm probably wrong, and I wish somebody would explain it to me. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Warden.

**DELEGATE WARDEN:** I have to reveal my vested interests. I am from Cascade County, and I am well aware of the problems that they have had in welfare. And I would just like to say I want to support the majority, and I do not want to delete this section.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Being a member of this committee and coming from a county that is neither metropolitan nor otherwise—and no medical facilities—our levage [sic] is 15.4, I think, to date, on welfare. I don't agree with all the welfare programs, in my own mind; but at the same time, I have to support the Section 2 as the committee has written it.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, I was about ready to suggest a new approach to this. It seems to me if we strike the words, on line 12 of page 14, "Legislative Assembly" and insert therein "Fish and Game Department"—now we haven't gotten the Fish and Game Department in the Constitution yet, and it seems to me like this is somewhat indirectly related to their recreation program anyhow.

**CHAIRMAN GRAYBILL:** Mrs. Van Buskirk.

**DELEGATE VAN BUSKIRK:** Being a member of this committee, I would resist the motion to delete this section, because, as has been mentioned by other speakers, I think that welfare should be included in the trend along with the other changing, you might say, needs of the Constitution and, as long as people are moving from county to county, that some counties are shirking their share and by this way, the way the Legislature would provide would probably be equal for everyone.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. President, also being a member of this committee and being on the subcommittee that drafted this, I could make an observation here that the County Commissioner from Cascade County made the appeal for this type of article, due to the fact that he wanted the word "state" stricken from the article in the present Constitution, thereby not being in conflict with any federal funds that would be coming into the state; and that is why we took that out and left it to the Legislature to decide. And I therefore support the majority proposal.

**CHAIRMAN GRAYBILL:** Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman, so far we've been talking about nuts and bolts and dollars and cents, and I think the mere fact that we're considering deleting this article is reprehensible. I think we, as representatives of our people back home, owe something to other members of this state. I don't care what county you live in or what end of the state, I think we have a humanitarian obligation.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman, I wonder if Chairman Heliker would yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Heliker?

**DELEGATE HELIKER:** I was afraid somebody was going to ask me that.

**DELEGATE BURKHARDT:** Mr. Heliker, it seems to me that possibly, as Chairman of the committee, you many times demonstrated a facility here on the floor of getting to the heart of an issue and laying it open, and rather than go into great length, would you present your reasons why this is important? I feel it should not be deleted, but I'd like to hear your statement on it.

**DELEGATE HELIKER:** Is that a question?

**DELEGATE BURKHARDT:** That's a question.

**DELEGATE HELIKER:** I think Mr. Swanberg has very thoroughly covered the matter. It seems to me that the issue is perfectly clear.

**DELEGATE BURKHARDT:** How are you going to vote?

**DELEGATE HELIKER:** I'm going to vote for the majority report.

**DELEGATE BURKHARDT:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Studer—oh, he's not here. Mr. Skari.

**DELEGATE SKARI:** I see some of the problems the committee faced here. I would like to just question how far do we go with state financing? The problem of fair taxation is who pays for what. Now, how about such things as county roads, for example? These rural counties have problems, too; they're real problems. Maybe their welfare levy is considerably lower. I just took down a few statistics here. I notice that McCone County has a welfare levy of 6.5 mills, but it has a road levy of 20 mills and a bridge levy of 3. Liberty has a road levy of 15 mills, a bridge levy of 3.5, and a poor fund levy of 5—or poor—welfare, rather. Yellowstone, on the other hand, has a road fund of only 3.8, a bridge fund of 1.7 and a poor fund of 7.27. Silver Bow—while it has a poor fund levy of 17, it only has a road fund levy of 6.75; and Missoula, a poor fund levy of 12.9, has a road fund levy of 3.68. I ask you to also consider that in these counties, anyone is certainly welcome to drive on the county roads there. We have, in my rather sparse county of 2,300 people, we have, I think, 1,100 miles of road that we do touch with a blade at one time or another; I think Chouteau has something like 3,000. So I think—I realize these problems that the cities are having because of the mobile society, but we have some problems here, too, that I think are connected. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman. In answer to Delegate Skari's analysis here, it was brought—presented to the committee that it depends on the evaluation of the land in each county how much money each mill levy—each mill will bring in on taxation, and I think this accounts for considerable difference in Yellowstone and Great Falls Counties, because the evaluation of the land and the property is higher in the Yellowstone County. This was presented to us in committee. And here we come right back to the same problem we had on Taxation and Revenue Committee, of equalization of taxes and assessment of evaluation of properties. Does that answer your question?

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President, is there any room for a substitute motion up there now? Just a motion to delete some language?

**CHAIRMAN GRAYBILL:** We have a motion to delete the whole section. We have—I have before me two other motions if that one's defeated, all from Mr. McNeil. I don't know what you have in mind. Could we get rid of the one to delete it, and then if it's deleted, why, we'll take yours, Mr. Wilson, and you can put another one in. If you don't delete it, when we've defeated it, you can amend it.

**DELEGATE WILSON:** Okay. If it's deleted, mine wouldn't fit. (Laughter)

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. President, I strongly oppose the motion to delete, simply because the last week or two we have been entrusting our all to the Legislature, every bit of our Taxation and Finance Article. We have to put our complete trust in the Legislature, and I think that it's ridiculous now to start quibbling about the fact that we are just entrusting them with the responsibility for providing for the indigents. And to explain to Mrs. Bowman, if you will read the comments on page 14 and 15, I'm sure that word "for" was inferred. And as I said before, I was disappointed that they didn't make it a state duty, but they didn't; they've left it up to the Legislature; and we have left everything else under the sun to the Legislature, so I fail to see now why we're worried. Thank you.

**CHAIRMAN GRAYBILL:** All right. Now,

the Chair wants to vote on this and some other amendments tonight, so if you have something new to add, fine; otherwise, let's begin to vote.

Mr. Swanberg.

**DELEGATE SWANBERG:** I just want to make one short comment, Mr. President. A little while ago, I acquiesced in Mr. McNeil's motion to delete, and that was an error. It was based on technical considerations only and did not go to the heart of the matter. I most definitely would like to see the meaning of Section 2 retained, and for that reason, I would now resist the motion to delete. That's good enough.

**CHAIRMAN GRAYBILL:** Very well. Mr. McNeil, do you want to close?

**DELEGATE McNEIL:** Yes, Mr. Chairman. Briefly, all of the comments here, all of the debate, have been oriented toward whether it's going to be a shift from the county to the state. My concern is we're shifting from the Legislature "may" provide economic assistance to a shift to a constitutional mandate that they "shall". We are providing a constitutional right to welfare that is not in our present Constitution. Our present Constitution says the Legislature may provide economic assistance; this says they shall. And my motion does not speak to who pays for it; my—to delete this section would leave no reference in the Constitution to the county, which is in the present one, nor would it leave any reference to the state; it would leave the decision as to who's going to pay for it, whether it's going to be the rural areas or the city, or whomever—would leave that decision to the Legislature; and that, I submit, is where it belongs.

**CHAIRMAN GRAYBILL:** Very well. Do you want a roll call vote or not?

(Affirmative response)

**CHAIRMAN GRAYBILL:** Very well. All those in favor of deleting Section 2 in its entirety, vote Aye; all those opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Aye |
| Artz | Nay |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Absent |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Excused |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Aye |
| Habedank | Absent |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Absent |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |

| | |
|---|---|
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Absent |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Absent |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 30 delegates have voted Aye; 59 have voted No.

**CHAIRMAN GRAYBILL:** 59 having voted No and 39—30 having voted Aye, the motion is defeated.

Mr. McNeil, do you want us to read your Number 1?

**DELEGATE McNEIL:** Please.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 2, Institutions and Assistance, page 13, at lines 11 and 12, by striking 'It shall be the duty of the Legislative Assembly to' and substitute therefor the following: 'The Legislature may'. Signed: McNeil."

**CHAIRMAN GRAYBILL:** Mr. McNeil has an amendment, the purpose of which is to strike from lines 11 and 12 the language "It shall be the duty of the Legislature to" and start that sentence out by saying "The Legislature may provide economic assistance", and so forth, "as may be necessary".

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I think the intent of that is obvious; it's to conform to our present Constitution and to avoid establishing a constitutional right to welfare without the requirement of any work. I close.

**CHAIRMAN GRAYBILL:** Mr. Wilson, does your amendment apply now?

**DELEGATE WILSON:** That was my amendment. We just—I don't know—We had mental telepathy going here, I guess so—

**CHAIRMAN GRAYBILL:** Very well, I'll strike your name and assume that this satisfies you. Okay.

Mr. Monroe.

**DELEGATE MONROE:** Mr. President. I would resist this amendment or motion to delete those words. I think, as a social change comes about in our society, we see indications of welfare rights, or welfare becoming more of a right than it has in the past. Our committee, in the Bill of Rights, for example, had a section in our treatise in regard to this same question. And I think it's a matter of time before all of us in the United States of America have a constitutional right to assistance. And I strongly resist this motion to delete this. I do believe that all of us have a right to assistance if we cannot provide for ourselves. And I think that's what we're talking about here—is people who cannot provide for themselves, or are in a temporary state where they cannot provide for themselves. And some will never be able to provide for themselves. And I think that is their right and it is our duty, and as they're suggesting here, the Legislative Assembly—it shall be their duty to provide for those people. I definitely believe it is right, and I think we should keep this section as is proposed by the majority.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. McNeil's motion to take out the words "It shall be the duty of the Legislative" and substitute "The Legislature may".

Mrs. Bugbee—Mr. Harper.

**DELEGATE HARPER:** In 1889 the Constitutional Convention used the word "shall". It didn't say "the Legislative Assembly", it said "the several counties of the state shall provide as may be prescribed by law for those inhabitants who, by reason of age, infirmity" and so forth. I don't think we want to step back past there.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. Chairman, I rise in opposition to Mr. McNeil's motion, mainly on the—well, partly on the grounds of what we did in Natural Resources and Agriculture Article. We said, "The Legislature shall enact laws and provide appropriations to protect, enhance and develop all agriculture." We didn't say anything about working there either. I think we'd better stay with "shall" here.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. This—I hope this is not personal here, it is not intended to be. But Mr. McNeil, in presenting the thing, at the end of his sentence, used the word "welfare without any work". I must say that it touched off something in me, because it told me that behind those words was a real opposition to welfare. I'm not so sure that what we're saying here isn't an attempt, really, to kill this type of responsibility. I get that feeling—I—in that type of words that are used. The appeal that comes to me as we debate this this afternoon is, before the Convention started, someone asked—at one of those sessions where, as a novice politician, you were asked all sorts of questions—what is the requirement to be a member of the Constitutional Convention?—sort of a—one of those personality things you should have. And someone answered it—and it struck me at the time—that we need statesmen and not politicians. I suggest that we're, perhaps, approaching this problem as politicians—dividing up the state, looking across these lists that we're looking at, and the rest of it—and not as statesmen. Seems to me if we were statesmen, we would look at that state responsibility and a clear statement of the state answering that responsibility.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman, I rise to support the motion that we keep Section 2 as is and against the amendment by Mr. McNeil. I feel that welfare and other types of assistance are with us, whether we like it or not; I think we have to face up to the problem. I also feel that this does not say a word whether there will be work to receive some of this assistance or not. I don't—and I oppose the motion. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Anderson.

**DELEGATE OSCAR ANDERSON:** I want to make something clear here, that I have not supported any of the motions—in any way, shape, manner or form—but I want to be honest with the people that I will contact after we leave this hall. My question was, "Is this a mandate to the Legislature for statewide welfare levies?" And again, in view of Mr. Swanberg's correction to his earlier statement, I would like to know if he would yield for a question.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Yes, I yield.

**DELEGATE OSCAR ANDERSON:** For the record, so I can be honest with the people that contact me or I appear in front of after this Convention is over with, is this a mandate for a statewide welfare property tax levy?

**DELEGATE SWANBERG:** No, it is not.

**DELEGATE OSCAR ANDERSON:** Thank you very much. And I wanted to have that very, very clear in the record.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. McNeil's motion to substitute "The Legislature may" for the words "It shall be the duty of the Legislature—Legislative Assembly to."

Mr. Heliker, do you want to speak before we vote?

**DELEGATE HELIKER:** I do.

**CHAIRMAN GRAYBILL:** Very well, speak.

**DELEGATE HELIKER:** I'll speak very briefly. I hope that we will keep the language of the majority report and speak no less strongly on this than the Constitutional Convention of 1889 did, but this is not an issue it seems to me that you should get unnecessarily excited about, and I direct your attention to the language "as may be necessary", which leaves it to the Legislature.

**CHAIRMAN GRAYBILL:** Very well. We'll have a roll call vote. The issue is on whether to substitute the language "The Legislature may provide economic assistance" for the language "It shall be the duty of the Legislature—Legislative Assembly". If you vote Yes, you'll be voting for Mr. McNeil's motion to use the phrase "The Legislature may". If you vote No, you will be voting for the present Section 2. Any delegates—Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Aye |
| Artz | Nay |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Excused |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Aye |
| Habedank | Absent |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Absent |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Absent |
| McCarvel | Nay |
| McDonough | Absent |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |

| | |
|---|---|
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 27 delegates have voted Aye; 64 have voted No.

**CHAIRMAN GRAYBILL:** 64 having voted No and 24 Aye, the motion is defeated.

Mr. McNeil, you have another one up here; do you want it in?

**DELEGATE McNEIL:** Yes.

**CHAIRMAN GRAYBILL:** Very well. Will the Chair—will the clerk please read that one.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 2, Institutions and Assistance, at page 13, line 12, after the word 'provide' by adding 'the opportunity to earn'. Signed: McNeil."

**CHAIRMAN GRAYBILL:** May I have it? Very well. Mr. McNeil has proposed an amendment which goes on line 12 in Section 2, on page 13. After the word "provide", he would add "the opportunity to earn", so that the sentence would read: "It shall be the duty of the Legislative Assembly to provide the opportunity to earn economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities or misfortune may have need for the aid of society."

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I think the intent speaks for itself, and I close.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. Chairman, would Mr. McNeil yield to a question or two?

**CHAIRMAN GRAYBILL:** Mr. McNeil?

**DELEGATE McNEIL:** I yield.

**DELEGATE MONROE:** Mr. McNeil, I'm wondering—a person that is an invalid in the Cascade County Convalescent Home, for example, that is on assistance; would you require them to earn their keep?

**DELEGATE McNEIL:** Of course not, Mr. Monroe. It says "the Legislature provide the opportunity". If they're incapacitated, they obviously would not have to work. The amendment is intended and directed to those who are physically able and capable of working who do not do so.

**DELEGATE MONROE:** Will Mr. McNeil yield to another question?

**CHAIRMAN GRAYBILL:** Mr. McNeil?

**DELEGATE McNEIL:** I yield.

**DELEGATE MONROE:** Do you think every able-bodied person that is, let's say, even temporarily on assistance should be made to earn that assistance?

**DELEGATE McNEIL:** Mr. Chairman, the proposed amendment provides that the opportunity to earn should be presented to them, and if the opportunity to earn their economic assistance is made available and they are physically able, I would say "Yes, they ought to before they receive it."

**DELEGATE MONROE:** Thank you.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** I would oppose this amendment to this particular article. It seems to me we've kind of covered it in our Section 3 of our Bill of Rights. We've suggested there that people have a right to pursue some of the basic necessities, and in that same section we also are suggesting that the people have a duty and responsibility—or corresponding responsibility, there—to take some sort of responsibility—for example, if they are receiving assistance. I don't agree with the idea that people should have to work for, let's say, welfare benefits, and I don't disagree with it either; but I know the problems that exist right now. If we're suggesting that people that are on assistance at this time go out and work for it, I think that's a great idea, and it has happened in many occasions in many of the counties in the State of Montana. The fact is that you can't even use prison labor outside the institutions, in many cases, because you run into union conflicts; and you would probably run into the same if you require assistance recipients to work for benefits there. It's a beautiful and a great idea, but it's rather impractical to implement. So I resist this particular amendment.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. McNeil's motion that we add the words "the opportunity to earn" after the word "provide", so that it would be the duty of the Legislative Assembly to provide the opportunity to earn.

Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, I was certainly happy, and I know my constituents will be, when Mrs. Robinson said that we had passed something in our Constitution that the people in agriculture wouldn't have to work anymore. I didn't realize we had done that; and I'm certainly sorry, Mrs. Robinson—I'd have never voted for it if I'd known we'd done that. But I do have a question for Mr. Monroe, and I'll make it short.

**CHAIRMAN GRAYBILL:** For whom? Mr. Monroe, do you care to yield?

**DELEGATE MONROE:** I yield.

**DELEGATE KAMHOOT:** Delegate Monroe, I notice in your county of Cascade, and I'm sure you're quite knowledgeable on this because you work with these people, the last report here, in '71, on the chart that—was 964 families receiving aid. Do you feel that none of these people were able to work in Cascade County?

**DELEGATE MONROE:** As those statistics also indicate, there was 2,355 children. Now, that indicates to me that there's a lot of ADC—these statistics are indicating ADC families, you've got 964 families—now, out of that many children, there's a lot of heads of households that are one-member households, let's say it's a female member. Now, if you want her to go out and work for her assistance, well and good, but what you're doing is you're taking her out of the family unit; you're taking her out of the household; maybe you're helping getting her some training or you're having her work somewhere. That's fine, if that's what you want. But I say "Let's keep that family unit stable; let's keep that family together." Those children have rights to grow up with the mother, to grow up with the love—it's a question of where you think that the head of the household should be, and I'm saying that a good number of the heads of those households on those welfare rolls in Cascade County are heads of ADC families, and it's usually women, and I say their place is in the home taking care of that family. If they're able-bodied and they can get out and work, well and good, if they want to. But I would say the better place for them is to get these kids education, get them through school so they can provide for themselves; otherwise, we're creating a cycle where the kids are going to drop out of school and they're going to be on the welfare rolls, too.

**DELEGATE KAMHOOT:** Mr. Chairman, another question?

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** I didn't expect quite such a long answer, Lyle, so I'll go back to my other question. Are there any of these 964 families that would be capable of working if they wanted to?

**DELEGATE MONROE:** I'm sure there are. I'm sure there are.

**DELEGATE KAMHOOT:** Thank you. That's all Mr. Chairman. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Blend.

**DELEGATE BLEND:** Mr. Chairman, to enlighten Mr. Kamhoot further, there are men in Great Falls and Cascade County who are capable of work, but we don't have jobs for them. What do they and their families do while they're attempting to get one? And I might also say that the great number of these people who come to the urban areas to find employment are unskilled and uneducated, and they seem to come from the rural areas. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, I'm in sympathy with Mr. McNeil in some aspects, but if you'll look at delegate proposal 148, this was presented to our committee, and it more or less says the same thing, but the committee rejected it because of a number of problems. First of all, it's not constitutional, but it should be, probably, looked at by the Legislature. Also, it states that the state, more or less, is the employer of last resort; so then we get into a problem with contractors and the unions. But I will have to stay with the committee and oppose the amendment.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. McNeil's motion to add the term "the opportunity to work"—or "opportunity to earn" into the sentence, so that it says: "It shall be the duty of the Legislative Assembly to provide the opportunity to earn economic assistance as may be necessary", et cetera. We'll have a roll call vote. So many as are in favor of that, say Aye—vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Aye |
| Artz | Nay |
| Ask | Nay |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Absent |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Aye |
| Cross | Nay |
| Dahood | Nay |
| Davis | Excused |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Absent |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Absent |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Absent |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Absent |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Nay |
| Noble | Absent |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |

| | |
|---|---|
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 19 delegates have voted Aye; 70 have voted No.

**CHAIRMAN GRAYBILL:** 70 delegates having voted No and 19 Aye, the motion is defeated. The issue is now on Section 2.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, may I direct a question to Delegate Swanberg, and then speak on the subject?

**DELEGATE SWANBERG:** Yes, I yield, Miles.

**DELEGATE ROMNEY:** Mr. Swanberg, I understand from our conversation that if Section 2 were passed, it is your opinion that the Legislature could, if it so desired, enact legislation and make appropriations which would be similar to what are now in effect?

**DELEGATE SWANBERG:** That is correct.

**DELEGATE ROMNEY:** Thank you.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** I'll address myself very briefly to this matter. I never have heard, in this body, a more gripping and thoroughly documented statement than that which was made by Delegate Swanberg. I think he did a splendid job. As the debate progressed, I became somewhat alarmed, because it is another case where we are passing the buck to the Legislature. And in this instance, the county is passing out of the picture and the Legislature is assuming some of the fiscal responsibilities that now are in the hands of the Legislature. As a respresentative of a county, Ravalli, which has a 15.4 mill levy, so we are growing close to the charmed circle where you pay on 17 mills for welfare and then perhaps can get some more if you need it. I, perhaps, should not have been alarmed; but I'm alarmed at the progressing tendency of this body, which was initiated in almost the opening day of the debate and has been growing progressively ever since, to transfer responsibilities to the Legislature, and chiefly they end up as fiscal responsibilities. And one of these days, the request for a fiscal note is going to come into—onto this floor and we're going to have to face this drizzly specter face to face. And whereas, I'm in favor of all these reforms, such as this and the school foundation fund and the rest of these things where we must have—where the state is assuming more and more responsibility, I recognize the fact that, one of these days, we're going to have to pay for them. And I have—this is not a taxing institution, this Convention; we are handing that responsibility over to the Legislature, which will be forced with the responsibility of raising the funds. And whereas, I can support this on the basis of Mr. Swanberg's statement, I am appalled at what the future is likely to unfold.

**CHAIRMAN GRAYBILL:** Members of the Legislature—Members of the committee, I have before me a motion by Mrs. Bowman, which is very simple, and I'd like to put to you since no one else is up. Mrs. Bowman wants to add the word "for" after "provide" on line 12, so that the sentence reads: "Legislative Assembly to provide for economic assistance". Is that correct, Mrs. Bowman?

**DELEGATE BOWMAN:** "Methods for". I'm sorry, it—doesn't it say "methods for"?

**CHAIRMAN GRAYBILL:** "—provide methods for", I see, "methods for economic assistance".

**DELEGATE BOWMAN:** When I read this last night, and it's still unclear to me that this is what we're doing—perhaps the "for" is implied, but it didn't come through that way to me. And it seems to me that what we're all hung up on is that we've given the Legislature sort of a carte blanche check to write the welfare provisions for the entire state. And it seems to me that if we insert those two words, or even the word "for", that we've made it clear that this will not necessarily rest totally with the state. That is all I have to say. Thank you.

**CHAIRMAN GRAYBILL:** Is there any discussion?

Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, as I read Section 2, it says, "It shall be the duty of the Legislature to provide economic assistance." That's a clear mandate, and the only way that the

Legislature can provide it is by levying a tax to fund it. And I rise in support of Mrs. Bowman's amendment, which gives the Legislature some leeway so that they can say that the counties take up to a certain portion and then the state will fund the rest, as they are doing now, or perhaps the number of mills can be changed; it leaves it flexible. But if we adopt this article the way it is now, there is no leeway left to the Legislature, but it must provide economic assistance and the rest of these things; and the only way it can provide it is to appropriate out of the general fund or levy taxes to fund the cost. But with the amendment, I think we've got—we have the flexibility that we're striving for; that it will give the Legislature an opportunity—say that the counties must levy up to X-number of mills and then after that the state steps in. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, will Mr. Aronow yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Aronow?

**DELEGATE ARONOW:** I yield—I will.

**DELEGATE BLAYLOCK:** Cedor, is it possible, then, for counties—under this present state law, can they leave their county levy ridiculously low so that they don't even try for state assistance, and thus run their people out and make them go to Cascade, Yellowstone, Silver Bow and the rest of them?

**DELEGATE ARONOW:** Well, I don't know the rules and regulations of welfare. I think there are some state standards that are set by the Department of Welfare that they have to pay up to a certain amount, and I think the welfare worker in each county is supposedly trained and guided and instructed by the State Department.

**CHAIRMAN GRAYBILL:** Mrs. Sullivan, did you want the floor?

**DELEGATE SULLIVAN:** No, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Speer, do you want the floor?

**DELEGATE SPEER:** Mr. Chairman, I am sorry. I cannot agree with my friend, Jean Bowman. To me, this section reads specifically that the Legislature is to provide the assistance, and I think that is the obligation. I do think that there is a trend in our federal government to make this a national responsibility, and we already—our state and local units are sharing in federal funds; so I would resist this amendment to change it to provide methods.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President, as I interpret this Section 2 as we have worked on it so far, it would seem to me that we've locked in forever into the Constitution the right to welfare, without any requirement that an able-bodied person will be required to earn a living. And I think that this is—I think we should take a look at this; I think we should provide the Legislature with the necessary flexibility to provide this assistance; and I think in their wisdom they, perhaps, will. We all know that welfare is a gigantic problem and it is going to need the sensible meditation of the Legislature and they are going to need flexibility to be able to provide for this assistance. And I think that we really need to consider this, and I am in support of Mrs. Bowman's amendment.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** I'm opposed to the Bowman amendment. This is a state responsibility; we cannot—I didn't want to talk, and the hour is late. We can't put any barricades on the highway from Forsyth to Billings; we can't and we won't stop a widow from Forsyth with three kids coming to Billings because we have good medical facilities and because we have jobs in Billings. The whole thing is that, and I'm convinced that if we don't do this, the Supreme Court, through the courts, are going to order us to do this statewide, just the way we handle education. And I submit that if we don't pass this thing the way it was written by the committee, and I'm rather shocked that the committee—I thought the committee would be a little stronger—I realize that, one by one, some of them have gotten up, but I thought they would be a little bit stronger about this matter. And if we don't approve this thing the way it is, we may as well go back—send a gallon of paint to the Statue of Liberty and paint out the words that says "Send me your poor". Thank you.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I resist the amendment. It is unnecessary, superfluous, and besides, it's excess baggage. The language of the majority report is perfectly clear—"the Legislature shall provide", and that leaves it to the Legislature to find the means and the methods and the funds to provide, and they may do it as they see fit.

**CHAIRMAN GRAYBILL:** Mrs. Bowman, do you want to close? You don't have to.

**DELEGATE BOWMAN:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mrs. Bowman's amendment to add the words "methods for" after the word "to provide", so that it would read: "The Legislative—the duty of the Legislative Assembly to provide methods for economic assistance, social and rehabilitative services as may be necessary." A roll call has been called for. All in favor of the motion, say Aye; all opposed say No—vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Absent |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Nay |
| Davis | Excused |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Absent |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Absent |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Absent |
| Martin | Absent |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |

| | |
|---|---|
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |

**CHAIRMAN GRAYBILL:** Who asked for the roll call? Monroe, did you ask for the roll call? Oh, Heliker asked for the roll call. Very well.

**CLERK SMITH:** Mr. Chairman, 36 delegates have voted Aye; 52 have voted No.

**CHAIRMAN GRAYBILL:** 52 having voted No, the motion is defeated. Members of the committee, you have before you, on the recommendation of Mr. Swanberg when this committee does arise and report, after having had under consideration Section 2, that we recommend the same for adoption. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. So ordered.

Mr. Eskildsen, can the committee rise and report progress?

**DELEGATE ESKILDSEN:** I—Mr. Chairman, I move the committee rise and report progress and beg leave to sit again.

**CHAIRMAN GRAYBILL:** The motion is the committee rise and report progress. All in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** Members of the committee, may I have your attention. While we're waiting for the report to be typed, I would like to make two announcements, even though it's out of order. First of all, there's—this Convention bought a number of Stenorette tapes; we are unable to locate all the tapes. Some of them were used—we have a number of them that are used and have material on them—but we cannot find all of them. If any of you delegates have put things on tapes and happen to have them yet or are using those tapes, we'd like you to let Mr. Baucus know so we can locate as many of our tapes as possible. Number two: the Chair would like a show of hands—you all understand that Miss Jeannette Rankin will be with us for awhile at 8 o'clock tonight. I'd like a show of hands as to how many are coming so I can decide whether to hold the meeting in here or in the Senate. All right, sufficient members have shown an interest that I think we'd better hold it in here. There was some suggestion that it be in the Senate, but it looks like about two-thirds will be here, and I think we'll hold it right here. So it will be here at 8 o'clock tonight with Miss Rankin. Will the clerk please read the committee report.

**CLERK SMITH:** "March 14th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration report Number 11—report Number 6 of the Committee on Style and Drafting, Environment and Natural Resources, recommend as follows: that the committee rise and report and beg leave to sit again. Signed: Graybill, Chairman."

**PRESIDENT GRAYBILL:** The motion—does anyone want the committee report read in full?

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** All right. Then—

**DELEGATE ESKILDSEN:** Mr. President, I move the adoption of the Committee of the Whole report.

**PRESIDENT GRAYBILL:** The motion is to adopt the Committee of the Whole report that we rise and report progress. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, say No.

(No response)

**PRESIDENT GRAYBILL:** So ordered. Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move that we adjourn until March 15th, 9:00 a.m., 1972.

**PRESIDENT GRAYBILL:** The motion is to adjourn until 9:00 a.m. tomorrow morning. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So ordered.

(Convention adjourned at 6:10 p.m.)

March 15, 1972
9:10 a.m.

## Forty-Sixth Day

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** If you'll all rise, Delegate Harbaugh will lead us in the invocation this morning.

**DELEGATE HARBAUGH:** Let us pray. Eternal God, today we would offer You praise in the words of the psalmist: "Bless the Lord, O my soul; and all that is within me, bless his holy name. Bless the Lord, O my soul, and forget not all his benefits, who forgives all your iniquity; who heals all your diseases; who redeems your life from the pit; who crowns you with steadfast love and mercy; who satisfies you with good as long as you live, so that your youth is renewed like the eagles." For the mercies granted to each one of us, O God, and for the beauty of this day, for the work that You have for us to do, we offer You our praise and our thanksgiving, through Jesus Christ our Lord, Amen.

**PRESIDENT GRAYBILL:** We'll take attendance today on the voting machines by voting Aye.

**CLERK HANSON:** Delegate Berg, Delegate Drum, Delegate Kamhoot, Delegate McKeon, Delegate Reichert, Delegate Roeder. Delegate Berg, Delegate Drum, Delegate Reichert, Delegate Roeder.

**PRESIDENT GRAYBILL:** Very well, take the attendance.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Absent |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Absent |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |

| | |
|---|---|
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

**PRESIDENT GRAYBILL:** Mr. Clerk, before announcing the attendance, Mr. Roeder and Mr. Berg are present.

**CLERK HANSON:** Mr. President, 98 delegates present, 2 absent.

**PRESIDENT GRAYBILL:** Very well, the journal may so show. Order of Business Number 1, Reports of Standing Committees.

**CLERK HANSON:** "March 15, 1972. Mr. President: We, the Committee on Style, Drafting, Transition and Submission, transmits herewith revisions of the Education Article, Report Number 10, for consideration by the Convention. John M. Schiltz, Chairman; William A. Burkhardt, Vice-chairman." Mr. President.

**PRESIDENT GRAYBILL:** Very well. The report of Style and Drafting on Education is placed on General Orders and should be on your desks this morning. Order of Business Number 2.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 3, Communications.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 4, Introduction.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 5, Final Consideration.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Members of the body, there are three reports—Judiciary, Natural Resources, and Revenue and Finance—which should be back to us yet today on Order of Business Number 10 in the Committee of the Whole and then, with very minor changes, can be placed on Order of Business Number 5. So that's what we anticipate there. Order of Business Number 6, Adoption.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 7, Motions and Resolutions. There are none now. We anticipate two resolutions before the day is out, to set up those committees. Mrs. Reichert, your presence is noted for the journal. Order of Business Number 8, Unfinished Business.

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Order of Business Number 9, Special Orders.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 10, General Orders.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** Very well. The motion is to resolve the Convention into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** So ordered.

(Committee of the Whole, Graybill, Chairman)

**CHAIRMAN GRAYBILL:** Mr. Clerk.

**CLERK HANSON:** The Style and Drafting Proposal Number 8, Bill of Rights, having been duplicated and placed on the delegates' desks on the 13th day of March, 1972, at 12:00 a.m. noon, will be in compliance with Rule 23 of the Montana Constitutional Convention as of 12:00 noon, March 15th, 1972. The following committee proposals are now on General Orders: Public Health, Local Government, General Government, Style and Drafting Number 8, Bill of Rights, and Style and Drafting Education. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Since the Bill of Rights has not been on the desks 48 hours, the matter up before us this morning automatically on Order of Business Number 10, General Orders, is to continue with Public Health, Welfare, Labor and Industry Committee, and we will do that. Members of the committee, we had completed nonmunicipal corporations and institutions and assistance yesterday. Today we're ready to start on the labor proposals. The majority proposal is found on page 8; if you'll turn to page 8 of your booklets. The clerk will please read the title and Section 1 of page 8.

**CLERK HANSON:** "Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on labor to read as follows: Labor. Section 1, Department and commissioner. The Legislative—"

**CHAIRMAN GRAYBILL:** Mrs. Sullivan, for what purpose do you rise?

**DELEGATE SULLIVAN:** Mr. President [Chairman], my Section 3 on the Institutions that we talked about yesterday.

**CHAIRMAN GRAYBILL:** Oh, I see. Mrs. Sullivan did have an amendment up here, and I see now that it is to—for Section 3, for Institutions, and it wasn't in the book. And so, we'll back up a little bit, and the clerk will read Mrs. Sullivan's Proposal Number 3—Section—the proposed Section 3 for the Article on Institutions.

**CLERK HANSON:** "Mr. Chairman. I propose as Section 3—quote: 'Section 3. Restoration of rights. Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. All rights necessarily suspended shall be restored upon termination of the state's responsibility.' Signed: Veronica Sullivan." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Mrs. Sullivan has a proposal to add a Section 3 to the Institutions and Assistance section. You have it before you, except the copy you have before you does not have her title in. She'd like the title to be "Section 3, Restoration of rights"; and you should write that in on your copies ahead of the underlined text—Restoration of rights. Mrs. Sullivan, your proposal is accepted for debate, and would you like to explain it, please?

**DELEGATE SULLIVAN:** Thank you, Mr. President [Chairman]. During the past few weeks, we have been reviewing all facets of government. We have extended the scope of our proposed Constitution to guarantee certain rights to large segments of our people, ranging from the 18-year-old to the restoration of rights of the criminal who has paid his debt to society and has been rehabilitated. There still exists, however, one group that deserves our consideration. It is for this reason that I rise today in defense of the rights of the mentally ill. We are all aware that, down through the years, the mentally ill have been treated largely with fear and suspicion. Our communities have put these unfortunates in hospitals or asylums and have literally forgotten all about them. In this day and age, we can no longer consider the mentally ill as cursed or as incurable. There have been unbelievable advances in medical care and treatment, particularly in the last decade. There has been much emphasis placed on rehabilitation not only of the criminal, but of the retarded, the handicapped, and the mentally ill. I am not concerned with the procedures, purely legislative, by which persons are sent to our various institutions. However, I am concerned that all individuals are treated equally by our Constitution. Since patients committed to Warm Springs State Hospital on standard commitments lose all their civil rights while in the hospital and until such time as the released patient goes through the involved and costly process of petitioning the courts to restore his or her rights, then why isn't this policy applied to all the mentally ill throughout our state? Why is it that individuals who can afford private psychiatric care and treatment or those who are handled by our community mental health clinics on an outpatient basis are not deprived of their rights? Why this double standard? This amendment in no way changes or recommends changes in the present care and treatment of patients in these institutions. It merely returns all rights to these individuals when, in the rehabilitative process of their treatment, they are considered by the professionals to be capable of functioning in society and are therefore discharged from the responsibility of the hospital. These people cannot function as effective members of society unless they have all the same, full rights. To deny these rights and to expect them to act as if rehabilitated is to expect the improbable. Therefore Mr. Chairman and fellow delegates, I urge you to vote Yes on this amendment. Let us, in Montana, be in the forefront in providing our mentally ill with the opportunities for complete rehabilitation. And I wrote that before I heard Jeannette Rankin last night. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, fellow delegates. The amendment that you have just listened to is a very important amendment. The essential quality of any type of system of justice is equal treatment. In the Bill of Rights, in Section 28, this committee approved the following language: "Laws for the punishment of crime shall be founded on the principles of prevention and reformation, and full rights shall be automatically restored upon termination of state supervision for any offense against the state." What happens to the mentally ill, who are ill through no fault of their own whatsoever; one of the tragic consequences of human personality? If an individual becomes mentally ill and has to be committed, he must, by the courts, be judged an incompetent person. When his treatment is completed and he is released, he must hire a lawyer. He must go to court. He must present his petition, evidence in support of it, and ask the court to enter an order restoring him to competency. Isn't this a truly shattering psychotraumatic experience for someone who has undergone a treatment, a hospitalization that has some bearing upon his personality's stability, and then have to walk into a court of law, even though he has been released by his medical attendant as fully competent, and once again announce to the world that he suffered from mental disease? What good reason is there for not allowing these individuals to be automatically restored to capacity upon their release from state supervision? When you're judged an incompetent person, your civil rights are taken away from you. If we can do that for the individual who insults society, who injures society, and who steals from society, we most certainly can do it for someone who is unfortunate enough to suffer from the type of mental disease and defect that requires placement in an institution. I commend to you the amendment that is before you. It states the same right for the mentally ill as the right for the convicted: "All rights necessarily suspended shall be restored upon termination of the state's responsibility." What could be more just and more right than that for the mentally ill? Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** I would also rise in support of this. I'd like to see us do it 98 to nothing. It seems to me that we live in a time when we recognize that mental illness is [not] something that one should be ashamed of or put down for, but somehow helped to become part of society again. As one who works with people both before and after hospitalization, it's a very difficult thing to come back after a loss of confidence that always goes with the feeling that your perception of the world is somehow not accurate. And it certainly doesn't help, when you're trying to rebuild a fabric of trust in the world around you, to have society take a position that you're no longer trustworthy. And I think it would be a great step forward, and I would like to support it.

**CHAIRMAN GRAYBILL:** The Chair will recognize Mr. Drum's presence, and it might possibly be a hundred to nothing, Mr. Burkhardt.

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President [Chairman]. I should also like to rise in support of this amendment. I think the most powerful argument that Mrs. Sullivan made to me when we were talking in private, and she reiterated here on this floor, is the fact that if people have the economic wherewithal to go to private hospitals, then they don't suffer the loss of these rights. It's only those that we must commit to our state hospitals to whom we apply this law that they have to go through the courts to have a restoration of their rights. And I believe that, with the rest, that this would be a real step forward for the State of Montana, and I support her amendment.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. Is this the—I'm not sure—I lost the copy that was put on my desk, and—is this the one that's dated March third?

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE HELIKER:** Well, I have no objection to the intent, but the language says "persons committed to any such institutions", which refers to the Section 1 that we adopted, which replaces a section in the present Constitution which enumerates a group of institutions including educational institutions and so on. It's certainly not confined to mental institutions. I would suggest, therefore, that Mrs. Sullivan amend this to make it specific.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. I would resist the amendment simply because I think it's necessarily implicit, without any ambiguity at all, that if you're committed to any institution where your rights are jeopardized or suspended or taken away, that upon release from that particular institution, upon release from supervision, that you should have those rights restored to you. I don't see the problem that Delegate Heliker sees in it, and for that reason I would suggest there not be any amendment.

**CHAIRMAN GRAYBILL:** Mr. Studer—or Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. Would Mr. Dahood yield to a question?

**CHAIRMAN GRAYBILL:** Yes, I indicated that you may ask him a question.

**DELEGATE SCANLIN:** Thank you, Mr. Chairman. Was there a proposal, Mr. Dahood, that was submitted to your Committee on Bil of Rights relative to this particular amendment?

**DELEGATE DAHOOD:** There was a proposal submitted at a point when there was some confusion as to whether or not it should go within the Bill of Rights or within Public Health and Welfare. It was decided that it should go into this particular Public Health section. Our committee, 11 to nothing, was in favor of this particular right.

**DELEGATE SCANLIN:** Will Mr. Dahood yield to another question?

**DELEGATE DAHOOD:** I do yield, Mr. Chairman.

**DELEGATE SCANLIN:** Mr. Dahood, would it be impossible at this point to have it included in the Bill of Rights?

**DELEGATE DAHOOD:** I think it would require suspension of the rules, and I don't think it would be impossible to accomplish, Delegate Scanlin. But on the other hand, I think that inasmuch as we do have an article on Institutions and Assistance, I think as a Section 3 it would necessarily, logically fit within the ambit of this particular proposed article.

**DELEGATE SCANLIN:** Well, thank you, Mr. Dahood. As a member of the majority report on this committee, I would resist the amendment and have it referred to the Bill of Rights somehow or other. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I withdraw my objection, since no one is likely to be committed to any of these other institutions. That's the point, right? That we—okay—I have no objection.

**CHAIRMAN GRAYBILL:** Is there other discussion?

Mrs. Sullivan, do you want to close?

**DELEGATE SULLIVAN:** Mr. President [Chairman]. I would just like to add one thing. I would rather it be here with institutions, and I do not mean just Warm Springs, so I'd rather we didn't change it in that. But with all of the excellent help I've had, I close. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mrs. Sullivan's motion to add a Section 3 to the article on Institutions and Assistance, the section to be titled "Restoration of rights" and the text to be as you have before you.

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Roll call.

**CHAIRMAN GRAYBILL:** All right, we'll have a roll call. "Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. All rights necessarily suspended shall be restored upon termination of the state's responsibility." So many as are in favor of that motion, vote Aye on the voting machine; so many as are opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Absent |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 95 delegates voting Aye, 1 voting No.

**CHAIRMAN GRAYBILL:** Very well, 95 having voted Aye and 1 voting No, the amendment carries and that part will be included in

Institutions and Assistance. Now, Mr. Clerk, let's turn to page 8. We're on page 8 now of your booklets on the Labor Article; page 8. Will the clerk please read the title and the Section 1.

**CLERK HANSON:** "Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on labor to read as follows: 'Labor. Section 1, Department and commissioner. The Legislative Assembly shall provide for a Department of Labor and Industry. The department shall be under the control of a Commissioner appointed by the Governor, confirmed by the Legislature.'" Section 1, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McCarvel —Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1 of the proposed Labor Article of the Public Health, Education—Public Health, Welfare, Labor and Industry Committee, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. We have a problem of order here. If the committee will refer to page 10—if you read this over, you'll note that the majority report deletes from the old Constitution all parts of the Labor Article except Section 1, which it revises considerably. Mr. McCarvel has proposed an amendment relative to the old Section 4, which he has numbered Section 3. In order to discuss this subject intelligently, I think it would be desirable if Mr. McCarvel's amendment could be brought in right after Section 1. Are you with me, Mr. Chairman? Mr. McCarvel has before us on the desk and—proposed an amendment to the proposed Labor Article which he has numbered Section 3 and titled "Eight-hour day."

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE HELIKER:** I would like, with Mr. McCarvel's approval, to have that numbered Section 2, so that we can discuss it in connection with the old Labor Article and right after we discuss Section 1. Because its not—it would be out of order to take it after we discuss the merit system. Would that be all right?

**CHAIRMAN GRAYBILL:** Is Mr. McCarvel's Section 3 a committee amendment, or is it just Mr. McCarvel's? The rule is that we adopt new sections at the end, and I only adopted Mrs. Sullivan's when we did because it was the end of that article. And maybe I should have put it off till the end of the discussion, but it's been our practice to adopt new sections after we adopt everything else. But my question is—my preliminary question is, is this Mr. McCarvel's only or does the rest of the committee agree with it?

**DELEGATE HELIKER:** This is Mr. McCarvel's amendment, with which I concur. There's been no committee action on it.

**CHAIRMAN GRAYBILL:** Well, why don't you—I think the Chair will rule that you may refer to it, and so forth, and it may be styled anywhere that Style and Drafting wants to put it. But I think in all fairness to the way we've been doing it that it ought not to be a part of the committee's proposal. We'll go through the committee's proposal, and we'll take other new matter later, but you may certainly refer to it and discuss it. Okay.

**DELEGATE HELIKER:** All right, that's fine. With respect to Section 1, this is an abbreviation of the—of Section 1 of Article XVIII of the present Constitution. The proposal retains a constitutional Department of Labor. You will recall that the old section—or the present section, I should say, creates a Department of Labor and Industry and a Department of Agriculture. We've already readopted the constitutional status of the Department of Agriculture. Section 1 of this proposal would retain constitutional status of the Department of Labor and Industry. However, it deletes the requirement in the present Constitution that the department be located at the Capitol. It retains a constitutional office, but deletes reference to a specific term. It retains the requirement that the Commissioner be confirmed by the Legislature or the Senate. The committee felt that this was as far as we wanted to go in restricting the legislators' discretion with respect to this office. It is our intention that the Legislature may leave the Commissioner subject to removal by the Governor at his pleasure, or may in its discretion provide a definite term of office and/or require that he be removable only for cause. As under the present Constitution, the powers and duties of the Commissioner are left to legislative specification. And you may note that Delegate Mahoney dissents from this recommendation with respect to the deletion of a specific term for the Commissioner of Labor. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, would Delegate Heliker yield to a question?

**DELEGATE HELIKER:** Yes.

**DELEGATE ARBANAS:** You probably don't have your—I've been comparing this with the Department of Agriculture Article, which I feel much more satisfied with. It says simply, "There shall be a Department of Agriculture." My reasons would be that the last part is certainly already in the Executive Article, about appointed by the Governor and confirmed by the Senate, in the 20-department section; and secondly, that the Commissioner might well be the model now but not the model 10 years from now. How do you react to that idea of just, in the Constitution, authorizing the department and not specifying any further?

**DELEGATE HELIKER:** Well, it's not a matter on which I have a great deal of feeling one way or the other. Some of the other committee members may have. I would point out to you that we didn't go nearly as far as the Agricultural Committee did in writing into this mandate to the Legislature to specify duties and provide funds and all that other stuff that we did put in there.

**DELEGATE ARBANAS:** Mr. Chairman. I'm not prepared to do this, but I would like to test the idea before the group and to propose an amendment that the final sentence will be deleted from Section 1 of the majority report on Article XVIII.

**CHAIRMAN GRAYBILL:** Section 1 will be deleted from—

**DELEGATE ARBANAS:** The final sentence.

**CHAIRMAN GRAYBILL:** The last sentence of Section 1, on page 8?

**DELEGATE ARBANAS:** Yes, so the article would read: "The Legislative Assembly shall provide for a Department of Labor and Industry, period".

**CHAIRMAN GRAYBILL:** All right. Do you want to make a substitute motion to that effect—or an amendment to that effect? An amendment?

**DELEGATE HELIKER:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Okay. Mr. Arbanas has an amendment, the substance of which is to delete the last sentence of Section 1 on page 8 of the Labor Article. Is there further discussion?

Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman, may I ask Mr. Heliker a question, please?

**CHAIRMAN GRAYBILL:** Mr. Heliker, will you yield?

**DELEGATE HELIKER:** Yes.

**DELEGATE BUGBEE:** George, is this—of the Executive Department of the 20 departments—is this meant to take the place of the 19th department, which is the only one left free?

**DELEGATE HELIKER:** Just a moment. I'm not sure what the answer to that question is.

**DELEGATE BUGBEE:** Well, I submit that this is really an important question, because when we—when the State of Montana voted for executive reorganization, essentially they were voting to strengthen the Governor's hand, to give him flexibility in the future to move one department; when they were phased out, to be able to move them around, change them at his discretion. I, myself, was very interested in having a Department of Local Government. I felt that if the 19th department was going to be taken up with anything, it should have been the Department of Local Government. But I resisted this on the very basis that I just didn't feel that it's good government to write something in with rigidity in the Consitution when he's going to need that kind of flexibility.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Might I refer this question to Charley Mahoney? He has all these things at his fingertip. Charley, where is that department now?

**DELEGATE MAHONEY:** It's one of the separate departments that we have. And it's Labor, and they've got the Unemployment Compensation. This is already one of the departments, Mr. Chairman. It's already one of the departments of state government. In the—Labor is one of them, and I think Mr. Smith is some—secondly—I don't know who—I think he heads it—I think he's heading the whole department—Smith's heading the whole department. Unemployment Compensation, everything is under him.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Is it presently called the Department of Labor and Industry?

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** I can't give you the exact name on it, Mr. Chairman, but it's—isn't Unemployment Compensation—the whole works is in there in one group. But I can't give you the name, but I can look it up for you.

**DELEGATE HELIKER:** Well, Mr. Chairman, I think the answer, then, to Mrs. Bugbee's question is this wouldn't really make any change in the number of departments.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman, I disagree. I think by writing it into the Constitution you do write in inflexibility, and this is really not what we're here to do. That department is now being taken care of and being taken care of, I think, quite well. And I don't see why we should tie the hands of the Executive Department by writing this in. And I move to delete it.

**CHAIRMAN GRAYBILL:** All right. Now, do I understand that you've made a substitute motion to delete the entire section? Is that right, Mrs. Bugbee?

**DELEGATE BUGBEE:** Yes, sir.

**CHAIRMAN GRAYBILL:** Very well. The situation now is that Mr. Arbanas moved to delete Section—the second sentence. But Mrs. Bugbee has now moved a substitute motion to delete all of Section 1 of the Labor Article. Mrs. Bugbee, are you finished discussing it?

**DELEGATE BUGBEE:** For the moment.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** May I ask Mrs. Bugbee a question?

**CHAIRMAN GRAYBILL:** Yes. Mrs. Bugbee?

**DELEGATE BUGBEE:** Yes.

**DELEGATE HELIKER:** Mrs. Bugbee, when we came to this selfsame article of the present Constitution under the report of the Committee on Natural Resources and Agriculture, why didn't you move to delete the Department of Agriculture?

**DELEGATE BUGBEE:** I did. We discussed it.

**DELEGATE HELIKER:** All right then, Mr. Chairman.

**DELEGATE BUGBEE:** No, I'm talking about the Department of Agriculture. Mr. Gysler and I, we went around in that. And he said no, that that was not intended in any way to be one of the 20 departments. It's simply floating. That's my understanding, right?

**CHAIRMAN GRAYBILL:** Mrs. Bugbee, you're still answering. Are you through?

**DELEGATE BUGBEE:** (Inaudible)

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Well, may I inquire of Mr. Gysler to straighten this out? What is the answer to that?

**CHAIRMAN GRAYBILL:** Mr. Gysler, will you yield?

**DELEGATE GYSLER:** Yes, I'll yield. Mr. Heliker, as Mrs. Bugbee said, we did have a conversation back and forth on this. At that time I explained, as you have just explained, that Agriculture is—the Agriculture Department is presently one of the 20, just like Labor is one of the 20 at the present time. I'm sure we're both put—wanted these in there for the same reason; that these are two things that, you know, we know are always going to be there and will always be a department.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Thank you, Mr. Gysler. Mr. Chairman, I resist the proposed motion to delete on the grounds just stated by Mr. Gysler—that these are two parallel and important functions of government which have been there by constitutional provision and will be around. We have provided for a constitutional Department of Agriculture. I think we must, in interest of consistency, provide for a constitutional Department of Labor and Industry. It should create no problems that weren't created by the provision for a

Department of Agriculture.

**CHAIRMAN GRAYBILL:** Very well. Mr. Aasheim.

**DELEGATE AASHEIM:** Well, Mr. Chairman. I happen to have a chart from the organization of the Executive branch of government here with me, and they have activated the Department of Labor and Industry. And they had a Board of Labor Appeals as a department under the Department of Labor and Industry. But this has been activated according to this chart, if that was the question Mrs. Bugbee wanted to know.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. I'd like first to direct a question to Mr. Aasheim. Would he yield?

**DELEGATE AASHEIM:** I'll yield, but I don't know if I can answer it or not.

**DELEGATE ECK:** You've got the chart.

**DELEGATE AASHEIM:** I have the chart, yes.

**DELEGATE ECK:** Is it true that right now the Department of Agriculture is headed by a board rather than—I mean the Department of Industry and Labor—is headed by a board rather than a department head?

**DELEGATE AASHEIM:** It just says that the Governor has under his jurisdiction the Department of Labor and Industry. And the Board of Labor Appeals is a separate board under the jurisdiction of the Department of Labor and Industry. That's all I can tell you.

**DELEGATE ECK:** The Board of Appeals, did you say?

**DELEGATE AASHEIM:** The Board of Labor Appeals, yes.

**DELEGATE ECK:** Mr. Chairman. I agree very much with Mrs. Bugbee's point that it is restrictive in a Constitution to include specifications of various departments. However, I think that in light of the fact that we already have named a Department of Agriculture, and I don't think that we're at all likely to go back and reconsider our action, or could, I think that also a Department of Labor and Industry is really required. I think that there's no doubt that any change is likely to occur in the next hundred years, at least, in our state government which would make such departments unwarranted. And, therefore, we're not really hindering state government. I don't think it needs to be in the Constitution, and I would certainly support Mr. Arbanas' suggestion that the last sentence of Section 1 be deleted.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman. I rise in opposition to both of the amendments—or the motions—the motion to delete the section and also the motion to delete the last sentence. I am always amazed at the various statements that are made in these halls, and in other halls of discussion and debate, in which it gets up and teams to give the idea that some industry, like agriculture or mining or logging or services, is the greatest industry in Montana; it's the leading industry in Montana. I'm wondering how far any of these industries would get without labor. I have a farm, and I wouldn't do very much without labor. You who run lawyer offices wouldn't do very much without labor; you who are doctors—any business. I don't need to clutter up the record with naming the various industries or businesses that are dependent upon labor. And I think it is very nearsighted when we start to delete and to degrade the Department of Labor. Style and Drafting tried to make the Agriculture Department a little more understandable by the rearrangement of words, and they were rather emphatically told that they wanted the words just the way the Agricultural put them in the Constitution. And I think the Labor Department wording is not any more than adequate, and it's a cinch we do not want to delete them. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bates, you were up.

**DELEGATE BATES:** Mr. President [Chairman], fellow delegates. Just a few days ago, we added a Commissioner of Education. This was not a constitutional-status position before; both the Commissioner of Agriculture and the Commissioner of Labor have been. I agreed with the Department of Agriculture being in the Constitution, because I thought it was important. I would have preferred a Commissioner, but we—the general agreement was for a department. I feel this should not be deleted. It is very important, and I oppose the amendment. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman. If

you'll refer to page 43 of the old Constitution, both a Department of Labor and Industry and also Agriculture is in the first section. And it was the consensus of our committee to split these up. They'll remain the same as they've already been in the Executive branch; they've been organized for a number of years. I resist the motion to delete. I will go along with Mr. Arbanas' deletion of the last sentence, as a member of the committee.

**CHAIRMAN GRAYBILL:** Mrs. Van Buskirk.

**DELEGATE VAN BUSKIRK:** As a member of the committee, I also resist the motion to delete, because I do feel that Labor is one of our important departments, and I would like to see it in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President [Chairman]. As a member of the committee, I also resist the motion to delete.

**CHAIRMAN GRAYBILL:** Mrs. Speer.

**DELEGATE SPEER:** Mr. Chairman, thank you. I agree with Mr. Heliker that in—as consistency is concerned, we did approve in this Convention the retention of the Department of Agriculture, and there is just as great reason to retain the Department of Labor and Industry. However, I want to point out that I did not vote to retain the Department of Agriculture in the Constitution, and therefore I feel that I must be consistent; that these are not constitutional matters. They are in the statutes already established, and I think both of these departments are part of the traditions of Montana. I don't think there is any danger that they will be wiped out.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman. I would like to add some language that I sent to the Chair, at the beginning of the first sentence. But in view of earlier rulings of the Chair and in view of Mrs. Bugbee's motion to delete, is my—would my motion to add language to the present section be in order?

**CHAIRMAN GRAYBILL:** Not until we decide whether we're going to delete it or not.

**DELEGATE KELLEHER:** Well, then, I would like to speak.

**CHAIRMAN GRAYBILL:** But you may explain it.

**DELEGATE KELLEHER:** I plan to add, if it is not deleted, the words—quote—"to protect the rights of working men and for other purposes" at the beginning, if it is not deleted. I notice that the Agricultural Article—that agriculture is our number one industry in Montana. And I'm in favor of keeping the agricultural provision in, of course. But I do feel that, like Paul Harlow, that labor is also important in Montana. And therefore I am opposed to the motion to delete either the last sentence or the entire article.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman. I'm sympathetic with the women that want to remove labor, but not in the Constitution. (Laughter) But not in the Constitution. I think it has a place in here. It has for a good many years, and I think in the future it is going to be needed more than ever. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. I have now been able to get a little dope on what's in the Unemployment. This is all under the Department of Labor, and it's under the Commissioner, Mr. Smith. And this has been—this is also—the Unemployment Compensation, the Industrial Accident Board and some other minor things are under this department at this time. So this is not creating one of the new boards or taking up any board that we had under the 20. Now, if this should be removed, as the Bugbee amendment, then the Labor Department could be shoved anyplace, anywhere that they wished. And once we get this unicameral legislature and we get waves of hysteria, we're going to be in a terrible time. And I think that labor, as important a product as it is in the State of Montana, is certainly entitled to one place in the Constitution. I don't think that we should turn around out here and kick them out. Now, while I'm on my feet, I'm going to tell you why that I did not sign this report. I wanted to go further. I wanted the Commissioner appointed for a definite term, confirmed by the Senate or the unicameral body, whichever one it is, and then we would—they would know he would have the job for 4 years. Otherwise, the Governor might just wake up some morning and say, "I want your resignation." I think it would be unfair to labor. So this is the reason I did not sign it. I did not bring in a minority report, and I thought I would leave it up to the Convention. But I think this section, as good as it is—I'll go along for a while. The Legislature, in its wisdom, might determine a term of 4 years, or 2 years, or something like that, because I think we have a new plan that comes in with the annual session of the Legislature. We might decide that we wanted only 2-year terms instead of 4-year terms. Now, I'm not going to object, but I'd like to see this kept as the committee come in, even if I didn't sign the report. I am behind it 100 percent, and let's don't amend it. I think it's good. Let's don't take them out of the Constitution. And as I see it, I don't see why we can't have this man appointed by the Governor and confirmed by the Senate.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** I would just like to finish, and say in response to Mr. Harlow, that I am in no way against deleting or degrading any Department of Labor. As a matter of fact, I was backed by labor, and I'm all for them. I'm all for what is going on now in executive reorganization. But the very—the fact is that the people of this state did vote for executive reorganization, and implied in that is a flexibility that we leave it to the Legislature to handle, and to the Governor—to the Executive Department. And I voted against the Department of Agriculture, and I was roundly defeated, and perhaps I will be today. But this is a matter of principle, and I want to stand on it. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman. For the benefit of the delegation, I sent upstairs to our committee room and have brought down the chart that shows executive reorganization. If there's any place to put it up, I'd be happy to do that. The Department of Labor is shown here as one of those departments. So, if anyone would like to see it, it's here.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. President [Chairman]. I'm sure glad to see so many people in the House so concerned about labor. I hope their sentiments will prevail when I get up with mine. But I do want to mention that I want to support the committee. We sure feel this section should be in there, and I support it.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I, like Mr. Mahoney, have gotten ahold of a little dope since this question first came up. First of all, the Department of Labor and Industry is headed by a single Commissioner, Sidney Smith. Secondly, let me read you what is—the duties conferred upon the department are. The department will perform the functions of the existing Department of Labor, Apprenticeship Council, Employment Security Commission, Commission on Status of Women. It also has responsibility for Nurses' Employment Practices Act and the Division of Workmen's Compensation. There is a Labor Appeals Board of three members, created to hold hearings pertaining to the unemployment compensation matters.

**CHAIRMAN GRAYBILL:** Is there further discussion? If not, the issue—

Mr. Toole.

**DELEGATE TOOLE:** Any of you that have read the proceedings of the Constitutional Convention of 1889, the words expressed here this morning are almost identical. Grandpappy—my grandpappy voted for and fought for and led the fight for the Department of Labor. I gotta go along with the old boy. (Laughter)

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mrs. Bugbee's motion to delete Section 1 of the Labor Article in its entirety. We'll have a roll call vote. All those in favor, vote Aye; opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Absent |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |

| | |
|---|---|
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Absent |
| Garlington | Absent |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Absent |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Absent |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Absent |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Absent |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. Chairman, 4 delegates have voted Aye, 87 have voted No.

**CHAIRMAN GRAYBILL:** 87 having voted No and 4 voting Aye, the motion is defeated. The issue is now Mr. Arbanas' motion to strike the last sentence: "The department shall be under the control of a Commissioner appointed by the Governor and confirmed by the Legislature or Senate."

Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, fellow delegates. Certainly it was not my intention to in any way cut down the effectiveness of this department. About the only one I know in state government is Mr. Smith, and so I don't have those motivations. But in our Executive Article which we have adopted, we say, "Except as otherwise provided in this Constitution or by law, each department shall be headed by a single executive appointed by the Governor, subject to confirmation by the Senate, to hold office until the end of the Governor's term until sooner removed by the

Governor." Now, consistent with that, it seems to me that this second sentence is both unnecessary and inflexible. And therefore I think it's in tune with executive reorganization not to not allow the department to adjust to changing needs.

**CHAIRMAN GRAYBILL:** Is there other discussion? Very well, the issue is on Mr. Arbanas' motion to delete the last sentence of Section 1 of the Labor Article. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and so ordered. The issue is now back on Section 1.

Mr. Kelleher, do you want to make your amendment?

**DELEGATE KELLEHER:** Mr. Chairman. As I have done so many times in the last 2 months, I'm going to adheed [sic] and listen to the advice of my dear friend, Charley Mahoney, and withdraw my motion.

**CHAIRMAN GRAYBILL:** How many times? (Laughter) Very well, Mr. Kelleher's proposal is withdrawn. The issue is on Section 1 of the Labor Article. Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Heliker that when this committee does arise and report, after having had under consideration Section 1 of the Labor Article, that it recommend the same do pass—No, that it recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's adopted. Will the clerk read Section 2 of the Labor Article, page 9.

**CLERK SMITH:** "Section 2, Merit system. The Legislative Assembly shall establish a system under which the merit principle will govern the employment of persons by the state." Section 2, Mr. Chairman.

**CHAIRMAN GRAYBILL:** I don't know which of you gentlemen want to take this; you have me confused.

Mr. McCarvel—Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. I wish to withdraw my support of this section due to the fact that I don't think I can count on any help from the committee. Thank you.

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** I'd like to make a motion to pass consideration of this section until after we've dealt with the section concerning the right of public employees to bargain collectively. May I speak to this?

**CHAIRMAN GRAYBILL:** You may.

**DELEGATE McKEON:** Briefly, I just want to say that a merit system in itself is a very harmful thing to the labor unions and to the working people unless there is a provision for the right to bargain collectively. So for this reason, Mr. Chairman, I would request that we would pass consideration on this until we have dealt with the collective bargaining proposal.

**CHAIRMAN GRAYBILL:** The Chair thinks the rule—the motion is to defer—to pass, not indefinitely but to a specific time, and we'll make it till 1:30 p.m. And if that doesn't suffice, we'll adjust it at that time. Now, I will allow Mr. McKeon's motion. Is there debate?

Mr. Kelleher.

**DELEGATE KELLEHER:** I just have a question to ask of the Chair. I have an additional section to add to the Labor Department. Would I be foresworn here or prevented from adding that at that time, at 1:30?

**CHAIRMAN GRAYBILL:** Well, you'll never be prevented from adding anything if you can get the votes, but let's take it up later, okay?

**DELEGATE KELLEHER:** That's all I want to know. Thanks.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Am I lost here? I mean, did I get lost? I thought we had Mr. McCarvel's amendment come up, and now Mr. McKeon is talking about merit system, which is another section. And I didn't think this would affect Mr. McCarvel's amendment. I thought we would—maybe could complete the Labor. And this is not another section; this is another article. Am I lost here?

**CHAIRMAN GRAYBILL:** I don't think you're lost. It's another article—no, it's the same article. It's the Section 2 of the Labor Article. And the situation, Mr. Mahoney, is that when we came to it, Mr. McKeon moved to pass consideration until 1:30, and we're debating that motion.

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. Mr. Mahoney is probably right that this should have been put in as a separate article, but it wasn't; it was put in as a section. And we—to be logical, we should be considering Mr. McCarvel's amendment at this time. And I certainly have no objection, if Mr. Scanlin doesn't, to passing consideration of the merit system question until after we have disposed of these things having to do with the Labor Department and labor relations matters.

**CHAIRMAN GRAYBILL:** All right. Let's find the sense of the body on this. So many as are in favor of passing, until 1:30, Section 2 of the Labor Article, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's passed. Very well. Now, the Chair is somewhat confused. There's a minority report to the Labor Article. We have now dealt with Section 1; we've passed Section 2; there is no Section 3 except the new section, which should be considered last. Mr. Studer, are you ready? Or is this the time for Mr. Studer?

Mr. Heliker, do you have a view?

**DELEGATE HELIKER:** I guess I do.

**CHAIRMAN GRAYBILL:** Well, we'll hear it.

**DELEGATE HELIKER:** My view is that we ought to discuss the 8-hour-day question first and, if necessary to get to it, suspend the rules. Since it was a part of the old Labor Article and that's where we started, I think we ought to stick with it until we finish it.

**CHAIRMAN GRAYBILL:** Mr. Studer, do you object to taking up the amendment for a new section on the 8-hour law first? Mr. Studer?

**DELEGATE STUDER:** No objection.

**CHAIRMAN GRAYBILL:** Right. Well, the usual procedure is to complete the work on the majority and minority reports. But having the permission of both the majority and the minority here and being at the end of the Labor Article until we—until 1:30, the Chair will now entertain Mr. McCarvel's motion. Mr. McCarvel, do you want it read?

**DELEGATE McCARVEL:** Yes, Mr. Chairman. I'd like to have it read.

**CHAIRMAN GRAYBILL:** Will the clerk please read Mr. McCarvel's addition of Section 3 to the Labor Article.

**CLERK SMITH:** "Mr. Chairman. I move to amend the Labor Article by adding a new section to read as follows: 'Section 3, Eight-hour day. A period of 8 hours shall be—shall constitute a day's work in all industries, occupations, undertakings, and employments, except farming and stockraising, and except when an employee voluntarily agrees to work longer than the prescribed 8 hours; provided, however, that the Legislative Assembly may by law reduce the number of hours constituting a day's work whenever, in its opinion, a reduction will better promote the general welfare.'" Section 3, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 3, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Under the present Constitution, Section 4, it's stated that "a period of 8 hours shall constitute a day's work in all industries, occupations, undertakings and employment, except farming and stockraising; provided, however, that the Legislative Assembly may by law reduce the number of hours constituting a day's work whenever it is—in its opinion, a reduction would be—would better promote the general welfare, but it shall have no authority to increase the number of hours constituting a day's work beyond that herein provided." The thing that made that law ineffective was that if a man worked over 8 hours, it was in violation of it; and if he was required to work over 8 hours, it was in violation of it. That is why this amendment to this article reads that an employee voluntarily agrees to work longer. I think this will take care of this article, and I hope that the delegates will treat it favorably.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I concur in Mr. McCarvel's amendment, and I'd like to direct your attention to the discussion of this issue on page 11. We had hearings on this article, of course, and we became aware, as we went through the article and heard the witnesses, that there were certain problems with this section as it had been previously written. These are set forth on this page. However, I think the committee was generally of the feeling that if acceptable language could be found that would solve those problems, we were not adverse to keeping the section. We were not persuaded, in the course of hearings and committee discussion that we had found that language. I refer you particularly to the sentence in the middle of the page. That language is the language which Mr. McCarvel now suggests; and it would remove practically all protection for workers in nonunion situations, whereas it may be argued that the worker under union management contract needs no such protection. Well, we have found since—I've had a lot of correspondence and a lot of phone calls on this—that that statement simply isn't true; that, as a matter of fact, the provision as it is in the old Constitution has been used by certain unions and individuals to protect members of weak unions, in some cases, and in other cases, members of strong unions who do not have any contractual protection, against compulsory overtime. Now, the fact is, of course, that for most employees this is no great problem. Most employees—or the great majority, I suppose—want all the overtime they can get. But there are certain employees, for certain reasons—all kinds of reasons, and many of them very good reasons—who resist compulsory overtime beyond 8 hours a day. And this provision in the old Constitution has, as a matter of fact, been used. I have a couple letters right here in front of me—one from Hotel and Restaurant Employees Union—where they cite specific examples of using this provision to set an employer right who was working a girl washing dishes for 15 hours a day; and in another case, where workers in a sawmill resisted compulsory overtime and used this provision to combat it. I have a whole sheaf of grievance forms from the Anaconda Smelter in Anaconda, where the company disciplined employees, or threatened discipline, for refusing overtime. And these grievances were settled by the union on the basis that the disciplinary action was withdrawn when the union called the company's attention to this constitutional provision. So it has developed since we held our hearings, and since we wrote this provision out of the Constitution, or recommended so, that as a matter of fact, it has been an important matter to a certain number of employees. And I think that even with the language—which is necessary—"and except when an employee voluntarily agrees to work longer than the prescribed 8 hours", because, as Mr. McCarvel explained, under the present Constitution, the employee who voluntarily works longer than 8 hours is violating the Constitution as much as the employer. This language is therefore necessary to cure that problem. And it will, of course, mean that I suppose most employees in nonunion situations who are asked to work overtime will voluntarily agree to do so. But there are a significant number of situations where, despite that clause, the provision can be used to protect employees who wish to avoid compulsory overtime.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President [Chairman], would Mr. Heliker yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Heliker?

**DELEGATE HELIKER:** Yes, sir.

**DELEGATE ROD HANSON:** George, in your hearings, did you have any testimony that had to do with the new trend of a 4-day—four 10-hour day or 4-day, 40-hour week? I was wondering what effect this might have.

**DELEGATE HELIKER:** Yes, we—and that was one of the reasons why we—I think that's mentioned somewhere here—why we voted to remove it. However, with this clause in, "except when an employee voluntarily agrees to work longer than the prescribed 8 hours", that would take care of that problem. There wouldn't be any problem.

**DELEGATE ROD HANSON:** Would Mr. Heliker yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Heliker?

**DELEGATE HELIKER:** Yes.

**DELEGATE ROD HANSON:** Assuming then, George, you hired a new employee, would you have to get his agreement at that time? I suppose then that he would be willing to work these different hours than 8-hour day.

**DELEGATE HELIKER:** Yes. That would do it.

**DELEGATE ROD HANSON:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. This had a lot of discussion in the committee. And this is one of the things we discussed originally, was the new trend that's coming. We may get down here to the 40 hours by working 4 days. Then, this will be 10-hour day. I see in the future, maybe not too far down the line, that we develop into 3 10-hour days plus 1 5-hour day. In order to have 3 days off, this can be done. Industry can then operate around the clock. I think this is something that we have to look down the road to. I was just talking to one of the labor men this morning—Highway Department. It may be in maintenance men that we come to the point of letting—using this equipment for the full week, and come out to something like this. This is why that I feel very keenly on the flexibility that this is going to allow. We've got problems of—maybe we don't have to—we'll have two crews instead of one on overtime, partly. This is the thing that we were thinking of, and I'm sure Mr. McCarvel and I discussed this yesterday. And this was our main thing, was leaving some flexibility; not to hurt anybody, but to turn around we've got—we're—recreation. I'm not going to use the word "alarm", but we've got a lot of it. And these people now want 3 days off. I can see this coming. Now if we can do this and have the 10-hour day which gives 3 days off, I think it'll be a great flexibility. And that's why I support the amendment.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, fellow delegates. I would have to rise in opposition to Mr. McCarvel's amendment. The phrase "and except when an employee voluntarily agrees to work longer than the prescribed 8 hours" is exceptionally dangerous to labor. This would mean that when a man comes and applies for a job, his employer could require him to work any period of time—12 hours, 10 hours, 14 hours—and the guy that's looking for a job is going to have to sign that agreement and not going to have any choice. The Constitution makes it permissible—the Legislature could not prohibit it. So you're creating the exact opposite here of what you want to create. You want to protect labor, but you're not protecting labor by this clause, because, in effect, you're eliminating the 8-hour provision and you're making it constitutionally legal for any employer to require any employee to work any period of time. And I submit the man that's looking for a job doesn't have any choice; he's got to sign that agreement. And this is doing the opposite of what it's intended to do. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman and fellow delegates. I have to rise in opposition to the section as proposed by Delegate McCarvel. I'm extremely concerned that the bees in the bee industry might not consent to working more than 8 hours, and that's a personal interest of mine. But more important is the fact that I think that by putting this in the Constitution, we can do two things: one, we can lock it in and make it difficult for flexibility in the future in the area of a three-and-a-half-day week or a 4-day week, or whatever might come about in the future; and secondly, I think that the provision is something that the Legislature, in changing times, can much better handle. And I think that we have to have confidence in them in this area. And to specify an 8-hour day clearly has its dangers, and to allow for the exceptions has its dangers. And I feel that we're better without this section. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. In responding to Mr. Cate's comments, this problem that I spoke of and is spoken of on page 11 was recognized by labor, by the representatives of labor, by the unions; and, as a matter of fact, they are all, as far as I know, in agreement with the language suggested by Mr. McCarvel. There's just no way of coping with the problems except to put in that clause. As to Mr. Foster's comment that we're putting this into the Constitution, I would remind you that this is the result of a long tradition in Montana constitutional law. This was put in in 1903 as an amendment originally applying to underground mines and state employees and then was then strengthened in 1935 in a referendum adopted by the people applying it to all classes of employees. I think we should keep it, eliminating what problems have grown up around it.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, I rise in support of the McCarvel amendment. As Mr. Heliker stated, it's been a long tradition in Montana. The 8-hour day, the problems have been taken care of, and I think a large number of people in Montana would feel real aggrieved and hurt and disappointed if we had no reference to the 8-hour day in the Constitution. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Payne.

**DELEGATE PAYNE:** May I ask Mr. Heliker a question?

**CHAIRMAN GRAYBILL:** Mr. Heliker, will you yield?

**DELEGATE HELIKER:** I yield.

**DELEGATE PAYNE:** Mr. Heliker, I'm interested in women being able to work a 4-hour day. You know, some of us who have family responsibilities are not able to work a full 8-hour shift. And now with—and particularly in the nursing profession with this, hospitals don't want nurses working a half-day shift. Is there any remedy for that in this?

**DELEGATE HELIKER:** I'm not sure I undertand what the problem is.

**DELEGATE PAYNE:** Well, you see there are a lot of women who could work half days, who could work 4 hours a day. We would not want to be limited with this 8-hour business.

**DELEGATE HELIKER:** Well, you wouldn't be. Under McCarvel's proposal, it's strictly voluntary.

**DELEGATE PAYNE:** Well, it seems to me that it is restrictive, that you have to work 8 hours.

**DELEGATE HELIKER:** That you have to work 8 hours? No—

**DELEGATE PAYNE:** Well, if you're going to work—it takes away the flexibility of being able to work half days.

**DELEGATE HELIKER:** No, I don't think there's any such intention. I don't see it in the language either.

**CHAIRMAN GRAYBILL:** Mrs. Payne.

**DELEGATE PAYNE:** Well, is there any way in which this could be made clearer? Excuse me.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** I didn't hear the last question. Hold your mike a little closer.

**CHAIRMAN GRAYBILL:** Is there any way this could be made clearer, Mr. Heliker?

**DELEGATE HELIKER:** Well, can I see that copy? What you're saying is that the provision says "a period of 8 hours shall constitute a day's work". That's the—

**DELEGATE PAYNE:** Right, that's what you said.

**DELEGATE HELIKER:** Well, this has always been understood to mean that no more than a period of 8 hours—as a limit, in other words. I'm sure you're the first person who has ever thought of interpreting it as requiring 8 hours.

**DELEGATE PAYNE:** Well, now—Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Payne.

**DELEGATE PAYNE:** This is a problem in the nursing profession particularly, because some of us would like to work half-day shifts, and sometimes hospitals don't want that. And so it seems to me that this is somewhat restrictive. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, would Mr. Heliker or Mr. McCarvel yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Heliker or Mr. McCarvel, will you yield? Mr. Heliker?

**DELEGATE HELIKER:** Okay.

**DELEGATE FURLONG:** What effect, if any, would this 8-hour-day law have on the "in lieu of" clauses. For example, the mileage clause used by the railroad unions—a hundred mile or 8-hour day.

**DELEGATE HELIKER:** None at all. That's covered by federal law.

**DELEGATE FURLONG:** What about such things as—oh, time differential?

**DELEGATE HELIKER:** Time differential?

**DELEGATE FURLONG:** Yes. For example, if you're working a different shift, say a graveyard shift, and you get a time differential. Would it have any effect?

**DELEGATE HELIKER:** It could have an effect if the result was an employee was required to work more than 8 hours in one day. If he objected to that, he could use this.

**DELEGATE FURLONG:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President [Chairman]. As Mr. Heliker's just told you, the members of the committee would liked to have something—or would have liked to have had something in the Constitution about the 8-hour day. And it was not our intention, in deleting it, to be unmindful of the desires of labor in this respect. But you've all listened now to the various problems that arise in connection with this proposal. Mrs. Payne, I think, made a very good observation. It doesn't provide for those situations where there's less than an 8-hour day provided for. Mr. Cate has made a very good observation that those in nonunion employment may be victimized under certain circumstances. And these are the very things that Mr. Heliker and I tried to consider. And we tried to come up with a short sentence that would cover all these situations and, frankly, we weren't able to do so. Now, let's consider the 1889 provision. When that was passed, it was thought, on the face of it, that it was simple and workable in its terms. And yet, within a very short time, Workmens' Compensation was established, and lo and behold, anybody that was working beyond the 8-hour day, voluntarily or otherwise, was outside the terms of the Constitution and couldn't collect his workmen's compensation if the injury occurred during that period. And so, as a matter of fact, everybody had to start lying. They had to say that the injury occurred, not beyond the 8-hour period, but at the seven-and-a-half-hour times. And this is not a good situation. And I submit that if we try to put something in here that will cover the situations which we now foresee, in a very short time something else will come up and this thing will be unworkable. I think the whole thing is statutory, and there are many, many statutes on the books covering this. There's a provision for bakers; there's a provision for waitresses; there's a provision for carpenters; there's a provision for plumbers, and on down the line. I think that each of these different trades and occupations have different working conditions to contend with. And if we try to put something fixed and inflexible into the Constitution, I think we'll not be helping labor, but defeating the aims that we're trying to establish.

**CHAIRMAN GRAYBILL:** Mr. McCarvel. Oh, wait a minute—if you're not ready to close, I don't mean to cut you off.

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President [Chairman]. Will Mrs. Payne yield to a question?

**CHAIRMAN GRAYBILL:** Mrs. Payne?

**DELEGATE PAYNE:** I'll be glad to.

**DELEGATE BLAYLOCK:** Mrs. Payne, under your objections to this, you spoke about the nursing profession. Are you saying that a number of nurses have not been able to work because the prospective employer said, "Well, it's in the Constitution—you have to work 8 hours"?

**DELEGATE PAYNE:** I don't know that that's the reason. I do know that at one time I was turned down employment because I did not want to work an 8-hour shift. I only wanted to work half days.

**DELEGATE BLAYLOCK:** But they didn't cite the Constitution as the reason?

**DELEGATE PAYNE:** No, but I think now that we have aired this, I think they could use this now.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Would Mr. McCarvel yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. McCarvel?

**DELEGATE McCARVEL:** I yield, Mr. Chairman.

**DELEGATE REICHERT:** In view of Mrs. Payne's statements and her concern about part-time workers, would it help if your amendment included the word "full day's work"? It would read: "A period of 8 hours shall constitute a full day's work in all industries". And therefore part-time employees would not be affected by this.

**DELEGATE McCARVEL:** No, I can see where that would not change it any, either a full day or a legal day's work. Full day would be all right.

**DELEGATE REICHERT:** Mr. Chairman, is an amendment in order to add the word "full" before "day's work"?

**CHAIRMAN GRAYBILL:** It is, Mrs. Reichert, but—and you can make it if you want to. I might suggest that if we pass this, it can be amended.

**DELEGATE REICHERT:** Fine.

**CHAIRMAN GRAYBILL:** If we make several amendments to it now and don't pass it—

**DELEGATE REICHERT:** Mr. Chairman. May I speak momentarily in support of the amendment?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE REICHERT:** I do want to say that it is an important provision in our Constitution. I know there's some employees in this state who are fully capable of doing a competent job for 8 hours, but they just can't stand the physical strain for longer periods in some heavy industries. Some employers either force employees to quit or they fire them, if they refuse to work over 8 hours. This usually happens to an employee when he's at an age when it is hard to get another job. If most of the people would adhere to an 8-hour day, the unemployment rate in our state, I feel, would not be so great. Therefore, I support this amendment.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. President [Chairman]. I wish to add a few comments on things that we discussed in our committee on this deal, especially on this back-to-back week and the 10-hour days that they're working on, and starting to work so much in industry, especially in offices today. They're getting these 40-hour weeks in, and this was discussed very thoroughly, and this 10-hour law wouldn't help that a bit. Forty hours at 10 hours a day isn't a bad wrinkle, and it's coming to the front quite fast. In many industries in the East, it's been adopted, and they seem to like it. I was in a committee hearing one night—a subcommittee hearing—in which Mr. McCarvel and Heliker, and the aid of two business agents—you can't call that really a stacked committee, I don't suppose—but we decided then and there that the 8-hour law was not necessary, and we came out of that committee deciding against it. So I don't see why it should be brought up here.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President [Chairman]. I'm very happy to be able to support Jerry Cate after 46 days. (Laughter) It seems that this, to me, is a statutory matter to be worked out between labor and management. I think when you put the clause in as it now appears in this matter, "except when employee voluntarily agrees to work longer than prescribed 8 hours", it really takes it out. If he doesn't agree, then he's out. And so it seems to me that the majority proposal that's considered all these matters is very proper. And it seems to me that this could do more harm than good to the very people you're trying to benefit; I mean, to the employees and to the laborers. We're trying to put something in that will please them, and I think in the long run, it could be very detrimental to them. This thing is pretty well covered by statutory law. You'll remember there's a judgment came out of Madison County for the people that worked for the Children's Center that just collected four-hundred-and-some thousand dollars in a court action for working overtime, the housekeepers, around the clock. So there's a lot of federal law on this thing, and I think the majority has thought this thing out. And I think it's more flexible. I don't think voting against it's voting against labor in any sense of the word. I think you're giving them more flexibility, and I think the majority is the soundest measure in this regard.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman. I would like the journal to show that my vote on this issue will be strictly symbolic. The old man led the fight for this in 1889, and I'm not going to desert him 82 years later.

**CHAIRMAN GRAYBILL:** We may have a hundred and one delegates here. (Laughter)

Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman. I rise to support Mr. McCarvel's motion. I feel that labor itself feels that this is important that this is—remains in the Constitution as it is Section 4 in the old—in the present Constitution. I think we should maintain this. I think this has been used in many cases where there has been a dispute over the working over the 8 hours. And thus, I think if this Constitutional Convention turns around and takes this out, it may cause us a little problem. And I do say that labor favors maintaining this. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** I would like to reiterate what Mr. Harrington said. Labor very much wants this in the Constitution. Also I might say that until a few weeks ago, I thought the battle for the 8-hour day had been fought and won by labor. But apparently, after reviewing the grievance reports that Mr. Heliker spoke about later—a few minutes ago, I find that the battle is still being fought; and I find that the Anaconda Company, in particular, is fighting the battle. They are, many, many times coercing employees to work longer than 8 hours in conditions which are terribly unhealthy to the employee. And I think that a constitutional mandate for an 8-hour day is important. I think we have to retain it. I think that the statutes right now which provide for the 8-hour day are only written because we have the constitutional provision, and I fear what might happen to these statutes if we remove from the Constitution the mandate for an 8-hour day. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman. Could I ask Mr. McCarvel a question, please?

**CHAIRMAN GRAYBILL:** Mr. McCarvel?

**DELEGATE McCARVEL:** I yield, Mr—

**DELEGATE BABCOCK:** Does this mean 8 hours on the same job, or can they hold more than one job? I have lots of employees that hold more than one job in a day.

**DELEGATE McCARVEL:** This would be 8 hours on one job.

**DELEGATE BABCOCK:** Then, they could be a waitress for 8 hours and a cook for 8 hours if they wanted to?

**DELEGATE McCARVEL:** Yes. Well—

**DELEGATE BABCOCK:** Then, how does it help?

**DELEGATE McCARVEL:** That would be up to a bargaining agreement, I would say. That would come under—if you hit them in the same area there where you were—split labor—

**DELEGATE BABCOCK:** Well, are you going to prevent them from holding down two jobs? What if you have one a secretary for 8 hours and one a cocktail waitress for 8 hours?

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Well, that would—8 hours on a—would constitute a day's work. And if they want to work 16, I guess this would not relieve them of that responsibility.

**DELEGATE BABCOCK:** Well, therefore, I oppose Mr. McCarvel's amendment.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** Mr. Chairman. I would rise to oppose Mr. McCarvel's amendment. It would—and I—hate to question the wisdom of our labor friends, but going back to the time that the Constitution under which we now are living was written, I would presume that an 11-, 12- or 16-hour day was logical. And maybe 50 years from now, a 4- or 5- or 6-hour day may be something that is very commonplace. And it would appear to me that to put an 8-hour day into the Constitution would certainly limit the ability of the leaders in the labor movement to create better working conditions for laborers of 40 or 50 years away from now. And it also would eliminate some of the latitude of movement that it would appear labor could operate in in negotiating the 4-hour—or the 4-day, 10-hour; or maybe at some point in the future, maybe 4 4-hour days. As our society becomes more affluent, all reports that you read indicate that 50 or a hundred years from now, people may only have to work 2 hours a day to make a living and feed their families and to sustain life. And for us to lock something into the Constitution which could become very cumbersome to the labor movement down the road certainly looks like we lack wisdom in making that judgment at this time.

**CHAIRMAN GRAYBILL:** Mrs. Pemberton.

**DELEGATE PEMBERTON:** Mr. President [Chairman]. I have served several years on the Status of Women Commission in the State of Montana, which is a commission endorsed nationally. And at different times, we have discussed the possibility of women working for half days instead of the full 8 hours. And that is the reason that Mrs. Payne brought this up on her own behalf, and my support of her question. I feel very much that the amendment for 8 hours or longer is great, but by reducing the number of hours by Legislative—by the Legislature seems to me to limit it very much in reduction. I should like to hear, possibly, Mr. McCarvel talk about this.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman. There's nothing in here that does not allow less than 8 hours; 8 hours just constitutes a full day—as Mrs. Reichert asked if I would be—if I would condescend to do that. Eight hours is just the full day; and then, if you were forced to work over it, like they have done in the industry of my hometown—they have forced these men to work over 8 hours or be subject to discipline. Now, this is what we want to get away from. Eight hours is a full day, and some men can work more than 8 hours and some can't. And when they are asked to work, then it should be up to their discretion whether they want to work overtime or not and not be subject to discipline by working, which might be injurious to their own health. No one knows from day to day how you will feel, whether you feel like working more than 8 hours or not, and that is why the voluntary provision is put in here.

**CHAIRMAN GRAYBILL:** Mrs. Pemberton.

**DELEGATE PEMBERTON:** Mr. President [Chairman], may I ask Mr. McCarvel a question?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE McCARVEL:** I yield.

**DELEGATE PEMBERTON:** Mr. McCarvel, that part of it isn't what I'm interested in. It's after the semicolon, "provided, however, that the Legislative Assembly may by law reduce the number of hours constituting a day's work whenever, in its opinion, a reduction will better promote the general welfare."

**DELEGATE McCARVEL:** Yes, that we could go to a lower than a 8-hour day, that we go to a 6-hour day.

**DELEGATE PEMBERTON:** By legislation?

**DELEGATE McCARVEL:** Yes.

**DELEGATE PEMBERTON:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Would Mr. Swanberg yield to a question, please?

**DELEGATE SWANBERG:** I yield, Bob.

**DELEGATE KELLEHER:** Bill, if industry in Montana did go, say, to 4-day, 10-hour workday, would they have to pay—under this proposal, would they have to pay time-and-a-half for those last 2 hours of each of those 4 days each week, in your opinion.

**DELEGATE SWANBERG:** Well, this is one of those questions that would undoubtedly come up. The constitutional provision as written says "8 hours a day shall constitute a day's work". It doesn't say that there'll be overtime or no overtime for those extra 2 hours. It's just one of those ambiguities that a court would have to thrash out. It's not our intent that overtime be paid for those extra 2 hours on any one day, but we don't say that in here. And this, again, is another reason for leaving this whole thing to the Legislature. You'd have to write a book to put this thing in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Kelleher. The Chair would observe that they could work at straight time under the section, but not under the existing federal and state law.

Mr. Cate.

**DELEGATE CATE:** I'm going to move to amend Mr. McCarvel's proposition. And if you have before you the Committee of the Whole amendment, I would move to add, after the word "a" in the first sentence, between "a period", "a maximum period"; so that it reads "a maximum period of 8 hours", which would meet the—I believe, the question that Mrs. Payne had. And then on the fourth line, after "employee", to—would insert "or employees' association"—or "employees' representative"; so it reads "when an employee or employees' representative voluntarily agrees." And on line 3, after the word "except", "and except as provided by law"—"as provided by law" would be added in there. So that the entire section would read: "Eight-hour day. A maximum period of 8 hours shall constitute a day's work in all industries, occupations, undertakings and employments, except farming and stockraising, and except as provided by law, when an employee or employee's representative voluntarily agrees to work longer than the prescribed 8 hours; provided, however, that the Legislative Assembly may by law reduce the number of hours constituting a day's work whenever, in its opinion, a reduction would better promote the general welfare." Then, I would further move to amend the section by adding the following language after "general welfare"—striking the period and putting in a colon—"and provided further that the Legislature shall fix an overtime rate of pay in the absence of negotiated contractual provisions covering same between the employer and employee." I'll read that again: "and provided further that the Legislature shall fix an overtime rate of pay in the absence of negotiated contractual provisions covering same between the employer and employee." And that would protect the employee who is working for a nonunion type situation from being abused in the overtime situation.

**CHAIRMAN GRAYBILL:** Mr. Cate, the Chair has made notes of your amendments. The trouble is that if we amend this before we get the sense of the body, we're going to have to have this printed up. I don't think we should be adopting this kind of technical language without all the delegates having it on their table to look at. Therefore we're either going to have to print it up now, or we're going to have to pass the motion and deal with the 8-hour day. And if we pass it, then we'll print it up. But I just can't accept that kind of a long motion without it being printed up and put on the desks. So—

**DELEGATE CATE:** I recognize the problem.

**CHAIRMAN GRAYBILL:** —so, why don't you go out and print it up.

**DELEGATE CATE:** Right. I'd like to move that we pass consideration of this until 1:00 p.m. this afternoon.

**CHAIRMAN GRAYBILL:** Do you want to make that 1:45, so it's obviously after the other one? Mr. Cate, is that okay?

**DELEGATE CATE:** Yes, that's fine.

**CHAIRMAN GRAYBILL:** All right. Mr. Cate moves to pass consideration of this section until 1:45 today. All in favor, say Aye.

Oh, excuse me, Mr. Davis.

**DELEGATE DAVIS:** I wonder if we couldn't first determine whether they want the 8-hour day in the Constitution. If we could vote on that and then make a determination—if they do, then we could pass further consideration to make amendments. If it's the sense of the body they don't want it in, then we're wasting a lot of time and passing up a lot of stuff, when we could get on with our work. Now, that's just a thought. In other words, if they want an 8-hour day in the Constitution, we could meet that issue right now. If they don't, we'd have it settled. And if they do, then we could go on for amendments. Would that be agreeable, Jerry?

**DELEGATE CATE:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well, Mr. Cate. I'll have you withdraw both your motions.

**DELEGATE CATE:** (Inaudible)

**CHAIRMAN GRAYBILL:** Now, Mr. McCarvel, is it agreeable with you that we vote on your section with the understanding that if it passes, we will have it open for further amendment at 1:45 today?

**DELEGATE McCARVEL:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** And if we vote—so that everybody understands, if it's voted against, then we will have finished it; and if it's voted to put it in, it can still be amended. Is that correct?

**DELEGATE McCARVEL:** That's correct.

**CHAIRMAN GRAYBILL:** All right, now, let's do it that way, and then we'll know whether we need to do this or not. Is there further discussion before we vote on the principle of the 8-hour day? We'll have a roll call, but let's—is there any further discussion on the principle of the 8-hour day?

Mrs. Bates.

**DELEGATE BATES:** Mr. President [Chairman] and fellow delegates. I feel since this was in the present Constitution, and it is a protection, and since slavery went out a long time ago, or should have if it hasn't, and this is a basic human right, I feel it is a protection, and I also support it in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman. We took considerable time in the committee of trying to get something worked out for this 8-hour day. And from the things that have been said here, I don't want to vote against labor, but I think this thing is too complicated and too much statutory law to put in the Constitution. So therefore I oppose amendment.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Mr. President [Chairman]. It seems to me this was a very necessary protection back in 1889, and I suspect that's why they put it in then, because there was a real need for this 8-hour day. It was not universally accepted at that time. Now, it seems to me, this is covered by statutes by both the federal and state; also by tradition; that it seems to me that it is statutory now. It appears that it will limit the goals of labor rather than really give them any adequate protection, because there's several people, as Mr. Mahoney brought out here—the change is around the corner, and in leisure time and this sort of thing. And for this reason, I would favor deleting it.

**CHAIRMAN GRAYBILL:** Mr. Heliker, are you going to close, or is Mr. McCarvel?

**DELEGATE HELIKER:** Well, Mr. McCarvel can close, but I'd like to speak.

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE HELIKER:** A number of things have been brought up which I think are throwing sand in the machinery here. Mr. Swanberg said that under the original clause, we got involved in workers failing to receive workmen's compensation. It's my understanding that that never was a problem. Mr. Davis speaks of the majority report, and how he wants to support it. The fact is the majority, Mr. Davis, has fallen apart. And as a matter of fact, the majority was never very certain of itself on this, and we agreed to delete the thing because we, at that point, had reached the opinion that it wasn't useful to anyone. But we have found since, at least Mr. McCarvel and I, and I think Mr. Mahoney agrees, that as a matter of fact, to a certain number of people, it is highly useful and that we ought to keep it. And as I say the same thing to Mr. Skari, not everyone is covered by these laws that you speak of. And as a matter of fact, this constitutional provision is being used to protect some people at the present time. Now, as to Mr. Drum and his reference to 1889, this amendment was adopted in 1935. It's not quite all that ancient. As to it becoming cumbersome down the road and preventing labor from accomplishing what it wants to, and so forth, I don't think this is any problem either. Written as it is now written, with Mr. McCarvel's amendment, it's quite flexible. I would, however, like to see us vote on an amendment which would cure the, I think, purely hypothetical problem—but perhaps it's a real problem that Mrs. Payne brought up, by introducing after the first word the word "maximum", so it would read: "a maximum period". And I so move as an amendment, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. James, do you want to speak on that? The Chair hasn't decided whether to allow it, yet. No, you don't have the floor. Mr. Heliker, I have an agreement with the author of this committee that we're going to decide whether we're going to vote on the 8-hour day or not, and then we can amend it if it passes. Now, you've explained your amendment, and I'm going to rule your motion out of order. Is there other discussion of whether or not—a general discussion of the 8-hour day only. And my personal view is that everybody's discussed it rather thoroughly, but if anybody cares to rise and complete the education of the body, here's your chance. Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. I am certainly sympathetic with the 8-hour day and everything, but as the small employer who has been thinking about, particularly part of the year, for the benefit of the employees, going to this 4-day and—or 4-day workweek for the 40 hours, which, of course, has been covered for about 12, 13 years under the Federal Wage and Hour Law, and that allows me to do it. But, I've always kind of looked at this provision and wondered what would happen if I had 90 percent of my people want to do this and the other 10 percent don't. It's always bothered me as to just what would happen here. So I'm going to vote for deletion of it.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. President [Chairman]. The reason I wanted to speak again is that I was asked to explain this back-to-back week. Apparently, some of them didn't understand it. And we did use this quite a long while ago, and it may come up again under these welfare programs that are being talked about. It's entirely possible that they'll put welfare out on WPA projects again. And it was the custom that they'd start on Thursday, Friday—or Friday, Saturday—Thursday, Friday, Saturday of one week, skip Sunday and work Monday, Tuesday and Wednesday. And that was a full week; that was a 60-hour week back-to-back, and workers would then start again on the next week, they'd have a week off and a week on.

And they would work on this back-to-back week, 10 hours a day. Well, now, this could hurt quite a bit, especially if welfare workers got into this; it hurt quite a bit. The way welfare workers get into it—they don't have the equipment or the machinery or the superintendents to get along on some of these projects that welfare workers may be assigned to, and it's entirely possible that something like this could come up again. I think it would be a good thing. And if they did, why, here you'd have an 8-hour law making a short work week out of it. The reason the 10-hour law would be better—naturally, I'm looking after the contractor's interests, are very selfish interests in being here. And a big contractor's lobby put me in here, of course, and just like some of these other outfits that have a few men in here and—

**CHAIRMAN GRAYBILL:** Stay on the subject, Mr. Studer. (Laughter)

**DELEGATE STUDER:** Okay. But then, on Heliker's—just reminded that there were some workers that weren't covered. Well, it's entirely possible that there's workers that don't want to be covered under this 8-hour law. I can imagine a lot of small businessmen, or filling station operators, or somebody that's out there working and they got a man working for them. And they got a—whatever they're doing—a couple hours left to work, they'd just as soon work; they're getting a good hourly wage. They don't have to be worrying about their time. They usually work sort of on a day basis, but they get a little extra if they work over; but they do work on hourly wages a lot of places. They're not covered by union laws. They're mostly covered by federal laws that—on this stuff anyway, but where they only have less than eight men, in a lot of cases they aren't. And if they want to work, let them work. I don't see harm in it; they want to. They're getting a good wage, and they don't always have to be protected. With a law like this, some lawyer get ahold of a fellow that happened to work 10, 12 hours a day, a big husky guy that didn't object to it at all, and come back and show him a couple years later you got a cause against this man. Don't you remember when you worked a couple hours over there? It could cause a lot of trouble. I don't see any reason for it being in there.

**CHAIRMAN GRAYBILL:** Mr. McCarvel—just a minute. Mrs. Babcock, he's going to close. Do you want to speak?

**DELEGATE BABCOCK:** I just want to add one thing. Housewives aren't protected. Would this limit their work to 8 hours?

**CHAIRMAN GRAYBILL:** That's either farming or stockraising, Mrs. Babcock. (Laughter)

Mr. James.

**DELEGATE JAMES:** Mr. Chairman. I take it Constitutional Convention delegates aren't covered either by this. But I would consider that—I'll make my remarks short so maybe we can get in an 8-hour day. I do think that to remove this would be a step backwards, though, and I'm all for Joe's section here.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman. I'd like to make a few comments on some of the statements that were made and—like Mrs. Babcock's. Maybe the housewife comes under the terms of recreation; or also stockraising might be raising pigs instead of children; I don't know. I've often said that to my own children. I would have been further ahead. (Laughter)

**CHAIRMAN GRAYBILL:** Stick to the subject, Mr. McCarvel.

**DELEGATE McCARVEL:** Well, as for Don here, he says that his bees might complain about working overtime, and I don't know why they'd complain. They got a honey of a job. (Laughter) So I see nothing wrong in here. It leaves it up to the employee to voluntarily agree whether he wants to work over 8 hours. That fear that you're going to limit it to just 8 hours—that's up to the employee whether he wants to work over the 8 hours. And the fear of less than 8 hours, well, the Legislature can take care of that and they can reduce the number when they see fit to promote the general welfare. And I don't see the fear. There's not as much wrong with this one, I would say, as in the present Constitution where it's locked in that you are in violation if you work over 8 hours and you're in violation if you have somebody work over 8 hours. So, with that, I close, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. McCarvel's amendment to add a new Section 3 to the Labor Article. The new section is to be an 8-hour day. And I won't read the exact terms of it, because the understanding is that if it passes, it may be amended further. The vote is really on whether or not you favor an 8-hour day in the Constitution, or whether you want it out of the Constitution. We'll have a roll call vote. All those in favor of an 8-hour day section in the Constitution, vote Aye; and those opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Absent |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Aye |
| Garlington | Aye |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Absent |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Absent |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Absent |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 65 delegates voting Aye, 27 voting No.

**CHAIRMAN GRAYBILL:** 65 having voted Aye and 27 having voted No, the section passes.

Now, Mr. Cate, do you want to make your motion to pass consideration till 1:45?

**DELEGATE CATE:** (Inaudible)

**CHAIRMAN GRAYBILL:** Mr. Cate has made a motion to pass consideration until 1:45. Is there discussion?

Mr. Heliker.

**DELEGATE HELIKER:** What time did we set for the merit proposal?

**CHAIRMAN GRAYBILL:** 1:30.

**DELEGATE HELIKER:** Well, this really ought to come before the merit change, for the same reasons I gave before.

**CHAIRMAN GRAYBILL:** All right. Let's set it for 1:30 or 1:29. We'll take it up ahead of the other one, if that's what you want. I'm not too firm on those times anyway, as you all know. The motion is to defer consideration of this until 1:29. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. Very well. If you'll all turn to page 16—Mr. Kelleher, we're not going to take yours next. We're going to finish the majority-minority report. I guess I'm on the wrong page. You should be on page 36—all right, 32. I've got a sheet up here that tells me where to go, but it's not very clear. (Laughter) With the help of Mr. Heliker, I'm going to get there. (Laughter) We're now on page 32, considering the Labor Article on right of organization and collective bargaining.

Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration—what article—the Labor Article on the rights of organize collectively, after having under consideration that the proposal—that it recommend that the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McCarvel, I put you in a bad position there. I should have had the clerk read it first. And, Mr. Clerk, will you denominate it Section 4, the right to work one being denominated Section 3. Will the clerk please read it.

**CLERK HANSON:** "Section 4. Right of organization and collective bargaining. Employees in private or public employment shall have the right to self-organization, to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other—

**CHAIRMAN GRAYBILL:** —concerted.

**CLERK HANSON:** —concerted activities for the purpose of collective bargaining or other mutual aid and protection." Mr. Chairman, Section 4.

**CHAIRMAN GRAYBILL:** Now, Mr. McCarvel, I'll consider that you've moved this for adoption by the committee. Do you want to discuss it?

**DELEGATE McCARVEL:** Yes, Mr. Chairman. This proposal is taken verbatim from Section 7 of the National Labor Relations Act except for the addition, "in private or public employment". Its intent is to give constitutional recognition to the right first accorded employees covered by the NLRA in 1935 and to extend them to all employees, including public employees. It does no more than confer the dignity of constitutional recognition upon the long-since well-protected rights of most private employees. It does, however, extend to public employees a clarification of their rights to organize and collective bargaining, with Benson versus School District No. 1, Silver Bow County, 139 Montana Statutes 77; and Zadarek versus Silver Bow County, 154 Montana 118, 1969. On the other hand, it does not establish the right to strike, nor in any manner restrict the power of the Legislature to regulate collective bargaining within the area not preempted by federal law; to regulate or prohibit the use of the strike or other aspects of the process of collective bargaining; or to regulate the internal affairs of unions. The Legislature is not mandated to implement the stated rights, although its power to do so is unrestricted. As respect to public employees particularly, the Legislature is given no mandate, although it is intended that the rights established would, of necessity, be recognized in any legislation providing for merit or civil service systems for state employees. The minority believes that it is time to give the rights of organization and collective bargaining the constitutional standing eventually accorded every basic right of free men. The history of constitution-making is that rights are accorded constitutional status after long decades or centuries of struggle for which they've been largely won in law and in fact. The rights recognized by the founding fathers in our federal Bill of Rights has already been won by countless brave and dedicated men who, for century, really gave their liberties, their lives, and their property to secure them. The Constitution merely reflects the success of the long struggle. The same long struggle extends in America over a century and a half. It was necessary to secure the rights to form unions, free from the repression of government and the coercion of powerful and ruthless agglomeration of private capital. The same unselfish sacrifice of liberty, life, and property by brave and dedicated men occurred as the never-ending battle to keep and strengthen the civil rights and liberties of the free people go unabated 2 centuries after our Bill of Rights was conceived; so will the striving to bring into employer and employee relationship in all sectors of the economy the principles of fair play, contravailing [sic] power—The majority rule has been recognized in law and fact for nearly two generations, but now is the time to a contest, to create and preserve the rights will be unending, to elevate them in general principle to the dignity of constitutional law. Mr. Chairman, I may reiterate a little bit, in that a number of our public employee relationships with the state at this time, and other segments of our state, city and county, all have the no-strike clause within their bargaining agreement. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President [Chairman]. The majority of your committee considered this collective bargaining proposal, and it's the majority of the committee's opinion that it's a legislative item rather than a statutory item—I mean a legislative item rather than a constitutional item. Our comments are found on page 35, the principal one being paragraph 3, which states that the right of public employees to collectively bargain would be an aspect of any merit system established. We believe that both of these are legislative matters and should be considered only by the Legislature. As I see the problem, a collective bargaining provision in the Constitution could be inconsistent with any merit system that was established. And by the same token, a merit system provision in the Constitution could be inconsistent with any right of collective bargaining in the statute. The two should work together, and they should work together at the legislative level. I might state, for the benefit of the members of the body, that a Senate subcommittee of our Legislature now has this whole problem under study—the merit system, that is—and whether it should not be established in the State of Montana. In view of the fact that there is this study underway and in view of the fact that collective bargaining could be repugnant to the merit system and, by the same token, in view of the fact tha the merit system could be repugnant to collective bargaining, it's my position that neither of these statutes—neither of these provisions, I beg your pardon, should be in the Constitution. I believe this is the feeling of the majority of the committee, and we would resist the motion of the minority.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. President [Chairman]. At this time, I wish to amend this article.

**CHAIRMAN GRAYBILL:** Very well. Your amendment is on what page? Is it in the book?

**DELEGATE STUDER:** It's in the book, on page 32—is the article we're talking about. And my amendment will read: "Public employees shall not have the right to strike."

**CHAIRMAN GRAYBILL:** All right. So you want to amend Section 4. What line do you want that on, at the end?

**DELEGATE STUDER:** Well, add it at the end of the article, at line 14.

**CHAIRMAN GRAYBILL:** Very well. Mr. Studer has proposed an amendment to be added on line 14. Add the phrase "Public employees shall not have the right to strike".

Mr. Studer.

**DELEGATE STUDER:** Mr. President [Chairman]. Mr. McCarvel, in his talk on his item—or—Section 4 just now—in closing—in the last sentence, I think he mentioned that the bargaining rights at this time do keep out the right to strike, and they have used this as their argument and, I suppose, in their bargaining. They don't have—they don't want the right to strike at this time, so I don't imagine they would oppose this, because there are so many ways that the striking privilege could hurt, and it's been demonstrated time and again that this is an unfair advantage. It's an illegal act. I don't see how they can ask a legislative group, a town or a city council, to delegate legislative rights to someone else for the body that follows. I don't see how they can make a collective bargaining agreement that could stand up. I don't know all the ramifications of the legal angles, but it certainly doesn't seem that they could be able to do this. They do have the right, however, to tie up the public to where it could actually cause a great inconvenience, even a loss of life. Fire departments, police departments would have the right to go. And if we use the experience of public employees to go along with what private organizations have done, they strike at the crucial times. I mean, they don't wait until everything is hunky-dory and it wouldn't hurt if you shut down for a while; their strike comes when your notes are due next month and when labor conditions are such that you got to use them right now. They weren't born yesterday; and this right to strike is used as a club. And I really believe that it's a very bad thing to—I don't mind giving the public the right to bargain; I have it in my own proposal. But I do think that giving the right to strike is something that certainly should not be allowed.

**CHAIRMAN GRAYBILL:** Is there further discussion on this matter?

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move to strike the—well, let's see—he offered an amendment. That's the question, isn't it, before the house?

**CHAIRMAN GRAYBILL:** Right. His amendment is to—"Public employees shall not have the right to strike".

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I would oppose the amendment, not that I don't think the Legislature should have full authority to prohibit strikes or regulate strikes of public employees. I do. I think, however, that if the Legislature restricts the right of strike, it should consider very carefully putting something—some viable substitute in its place. And it probably isn't necessary either that the right to strike on the part of public employees be prohibited across the board. There are probably some public employees who can be allowed the right to strike without serious—any more inconvenience to the public than is the case with private employees. This is a very complex matter, and not one, I think, which we can handle here. And that's the reason why the language that is included in this proposal was chosen carefully, to provide language under which all kinds of regulation have been imposed by law, including regulation of the right to strike—extensive regulation of the right to strike of private employees, and regulation of unions and their internal affairs. There is nothing in this language whatsoever which inhibits the Legislature from regulating any aspect of labor relations, private or public, which is not preempted by federal law. And I think it would be very inadvisable to enact such a blanket amendment as Mr. Studer proposes. At the same time, I think it should be left—the Legislature should be left absolutely uninhibited in its power to do so.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move as a substitute motion that this section of the majority report be deleted in its entirety—of the minority report.

**CHAIRMAN GRAYBILL:** Very well. Mr. Joyce has made a substitute motion to delete Section 4 in its entirety.

**DELEGATE JOYCE:** Mr. Chairman. Fools rush in where angels—

**CHAIRMAN GRAYBILL:** Just a minute, Mr. Joyce. I want to make it clear to everybody on the floor that the effect of Mr. Joyce's motion would be to wipe out the section which Mr. Studer proposes to amend. I don't want any misunderstanding that Mr. Studer's amendment would be left if you adopt the motion to delete. They will both be wiped out if you adopt the motion to delete. Now, you may certainly, then, make all the other amendments you want to, but I just want it clear so we don't get mixed up on what this does. Mr. Studer's was a motion to amend by adding, and if we wipe out 4, we have—wipe out what he's adding, too.

Very well, now, you may discuss it, Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. As I say, fools rush in where angels dare[fear] to tread. But my position, I think the position that this Convention should take, is that we should take—that we should not provide in the Constitution for any legislation on this subject. I'm going—I am opposed to the minority report for the same reason that I'm going to be opposed to Mr. Studer's amendment which is coming on, in that I submit that this is clearly a legislative matter, that the matter should not be spoken of in the Constitution, and that labor's right to organize should be left to the Legislature. They ought to fight those battles another day. It seems to me—I take the policy position of the AFL-CIO, which endorsed me for this Convention, at its face value. As I recall it, they stated that they thought the Constitution should be neutral, that they would give up any special legislation that favored them if other people would do the same. It seems to me that other people should and have done the same; that to include this in the Constitution as a constitutional right will cause great controversy around the state; that labor does not need this. It seems to me that they can—that the right of public employees to bargain with state agencies has to be given some fluidity in the future. They have to be able to be regulated by law, because in the nature of things, bargaining collectively with the government is different than bargaining collectively with private individuals. And it seems to me further that the Legislature should have the power to regulate this activity in the public interest. It doesn't follow that—necessarily that labor cannot get the right to bargain collectively with public employees; seems to me that the Legislature can authorize them to do so. But to write this into the Constitution as a constitutional right seems to me, as I keep saying, would be the height of imprudence and that this is clearly a legislative matter, just as the subject of the right to work is a legislative matter. I'm willing to have labor and management fight those battles another day, and I don't believe that either should be written into the Constitution. And, therefore, that is why I've moved to delete the section in its entirety.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Are we speaking just on the Joyce deletion thing, or can we speak to Mr. Studer?

**CHAIRMAN GRAYBILL:** No, you may speak to the issue.

**DELEGATE CHAMPOUX:** One of the strongest points in any collective bargaining procedure is the threat of the right to strike. And I think the reason perhaps why—well, to put this sort of amendment in will simply gut the whole collective bargaining process, as I see it. If we put it in, it freezes it forever. Later—the concept of the public employees striking is not acceptable to many people today, but in the future it may be acceptable under certain conditions. And if you do this, you might—if you accept the Studer amendment, you might as well throw this whole section out, because it's going to be worthless without the implied right to strike. Now, this sort of thinking—the Studer amendment sort of thinking is involved in a nationwide movement. There's a lot of this going on all over the country, not only in terms of denying the right to strike to public employees, but also attempts are being made to deny the right to strike to all of organized labor. There's a nationwide movement on, then, to take away this right to strike. It is, in essence, as I see it, an indirect attack on the right of collective bargaining itself. And if it is successful, then it means the death of the organized labor movement in this country. This proposal, then—I stand in support of the minority proposal, against the Studer amendment, and against Mr. Joyce's motion to delete. For I feel that this proposal without the amendment is a step forward; with the amendment, it is a step backward, coupled with other nationwide efforts that could lead us on a dark road that eventually could lead back to utter exploitation of labor. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. President [Chairman]. I rise to support the Joyce amendment. All through the campaign in Cascade County, I declared that I believed that neither collective bargaining nor the right to work had any place in a constitution; they are both strictly statutory; and therefore I support the Joyce amendment to delete.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, fellow delegates. I rise in opposition to the Joyce motion to delete in spite of the fact he's my close friend, associate, and fellow delegate from District 20. The matter of collective bargaining between employees of the government and the government itself was considered very closely in Zadarek versus Silver Bow County, 154 Montana 118, 1969 case. And I don't know how many of my fellow attorneys are familiar with the case, but the original opinion as written came close to saying that the—a public employee had no right to bargain, had no right to enter into a binding contract with a county or city organization. It was—the original opinion, as I remember, was written and then withdrawn before issued, and an opinion still quite restrictive but not so restrictive as to say there is no right to bargain was eventually passed. I think it is extremely important that the right of labor working for government to join into an organization and to bargain collectively be guaranteed by this Constitution, because I say, as late as 1969, there nearly was a declaration by the Montana Supreme Court that there was no such right. Now, particularly if this—the minority report had in here the option of Mr. Studer's proposal that these organizations have a right to strike, then I would not support such a thing. I also am opposed to Mr. Studer's right to—or amendment that they have no right to strike because the employees in the county, city, and state organizations fall into entirely different classes. When I worked for the State of Montana back in the long, long time ago in 1942, the—some of the employees, the teamsters in the—on the state department, went out and striked for a month, and I don't think the public was greatly inconvenienced. They arrived at a bargaining contract, and everything was fine. However, if your house was on fire and the—and your fire department was out on strike, it would be bone-chilling to think of such a circumstance. I think what Mr. Heliker has said, and I think what Mr. McCarvel has said—we—you don't want to give them the absolute right to strike; you don't want to give them any absolutes except the absolute right to do what everyone else can do, to join together and to bargain. Now, the Legislature can deal with this problem in the field of street repair, teamsters, things like that—a strike is no great concern to the public, assuming it doesn't go on any too long. But when you come to firemen, policemen organizations, entirely different approaches can be made. And I'm not suggesting these should be made by the Legislature, but there can be a system of state arbitration put in, binding arbitration in which the—in which if the parties couldn't agree, an arbitrator would be called in. He'd hear the—both sides; issue an opinion which would be binding; there'd be no right to strike. There's also been many years' talk of labor courts in which the issue would be settled that way. I particularly want to point out that all this does is just say these people have the same rights that you and I have to get together, form an organization, and go talk to our employer and see if we can't work out the differences between us. It doesn't give them the right to strike. And correspondingly, we should not take Mr. Studer's motion to say "thou shalt not strike", because then these people would be forever barred from going to these intermediate reliefs or, in appropriate circumstances, striking. And I don't want you to think that I think doctors or nurses or policemen or firemen can—we can ever reach a situation where they are allowed to close down those things we need for governmental protection. But I suggest that in view of the past history of the Montana Supreme Court, unless we adopt this measure, the public employees will sometime in the future be denied the right to enter into a contract with the state, county, or city. And it is one in which labor isn't looking for any special privilege. All they want is the right to go in and talk to their employer collectively and arrive at a satisfactory contract.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman. I must rise to support Delegate Joyce. Right at the outset, to delay any thoughts that perhaps, due to the seating arrangement, that there's been any influence on Delegate Joyce, I want to lay those at rest. Delegate Johnson and myself have not been able to influence him in one single matter. I think the CIO should be commended for selecting a delegate that has not only the guts, but has the common sense to stand up here and talk the way that Delegate Joyce does on things that should not be in the Constitution. And I certainly want to support him and his amendment here. And he has used a lot of common sense at many times, even when I didn't vote with him. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** We will be at ease one moment while the tape is changed. Very well, the committee will be in session.

Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman, fellow delegates. I rise to oppose the amendment by my fellow delegate, Mr. Joyce, and also by Mr. Studer. Now, many people say I am a teacher; I am trying to stand up for myself. Well, basically not, because we've had the right of collective bargaining in Butte since 1934, and we do have very fine contracts in Butte. And so, actually, what I'm doing here is speaking for some of these other public employees throughout the state. I feel that it's very, very important that these people have the right to bargain as any other type of employee—employer. And I think that this is a very important point that we have to make at this time, whether we put this in the Constitution. I believe it does belong in the Constitution. As someone has just mentioned a minute ago, the veterans are in the Constitution, the farmers are in the Constitution; well, I believe that labor should be in the Constitution. I think it does have an important part to do with the Constitution, the basic right of a man to work for a living wage. And I think that it should be supported by this Convention. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Blend.

**DELEGATE BLEND:** Mr. Chairman. I rise in support of Mr. Joyce's comments. It occurs to me that this Convention is being maneuvered into considering three items that should not be included in the Constitution. Because the—what is it called—employment right section has been included, I think, it was only then mandatory that collective bargaining be included. I don't believe that either one should be considered on this floor. Collective bargaining is well established by federal and by state law and will continue to be so. I think that the amendment that we are spending our time on is denouement to the entire situation. And I would ask this Convention to consider whether we should be spending our time on any of the three of these, because they are legislative and certainly not constitutional material. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** I rise to support Mr. Joyce's motion. In 1880, actually, after the Debs cases, a lot of states got together in their constitutions and put in antilabor provisions in their constitution. Labor yelled against these for 50 years, and they're still in some of the more conservative states. And that's actually what we might be doing here; I'm not so sure whether this is for or against labor, but it's purely legislative, what we're trying to do right now. It has no business in the Constitution. And I might say for those proponents of it that a very conservative court who would construe a constitutional provision, and not so much the Legislature, might narrowly restrict the rights supposedly granted by these provisions because of the thought we're giving to them right now. I've noticed some employees scribbling amendments to these sections without any thought as to the understanding and ramifications of these sections. And it's very easy that a Supreme Court could actually, narrowly restrict labor's right if you pass these things without that consideration. Now, the 8-hour day thing that just passed, which I think was poorly drawn and it could actually restrict the state. Not that I might agree with what they might want to do on it, but the state might be in a position, because of social reasons, to restrict it to a 6- or a 4-hour day, to pass around the work in the event of a great depression. Now, here it's got your clause in it that the employee can voluntarily agree with the employer and extend it over that 8 hours. And actually, because of this constitutional provision, the state might not be able to pass the work around. And the farther we get into it and the faster we write amendments, I think it's—the worse it's going to be. And I think the Supreme Court could very well, on a very conservative day, narrowly restrict labor's rights much less than what they were now. They worked 50 years and 60 years to get these provisions out of constitutions, and they finally have out of a lot of them—to get it in a legislative field so as times change, they can change the rules so that there would be equality between employer and employee in bargaining. But if you start sticking things in here and you start letting the court interpret it, then you might not be able to get the equality between the two of them that you need to have free and collective bargaining. Thank you.

**CHAIRMAN GRAYBILL:** Will the gentlemen standing in the back take your seats or move somewhere else? I can't see who's up.

Mr. Berg, are you up?

**DELEGATE BERG:** Yes.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE BERG:** Will Mr. Heliker yield to a question?

**DELEGATE HELIKER:** I yield.

**DELEGATE BERG:** Mr. Heliker. I call your attention to the words "and to engage in other concerted activities". And I want to also call your attention to Mr. Champoux's remarks that this collective bargaining provision necessarily implies the right to strike. I want to know if the words "and to engage in other concerted activities" specifically includes the right to strike.

**DELEGATE HELIKER:** In my opinion, it does not. I disagree with Mr. Champoux that there is any implication of the right to strike or of the Legislature's right to regulate strikes by public employees or by private employees who are—

would be covered by the section that is not already covered by federal law.

**DELEGATE BERG:** Would you yield to another question?

**DELEGATE HELIKER:** Yes.

**DELEGATE BERG:** If, however, those words were interpreted broadly by the Supreme Court, they could include the right of public employees to strike by virtue of this provision?

**DELEGATE HELIKER:** Well, there is no, as far as I know, any statute in Montana prohibiting rights—or public employees to strike at the present time. But I—again, I disagree with Mr. Champoux when he said the strike, on the part of public employees, may become more acceptable in the future. I would expect the trend will be the reverse, as a matter of fact, and that we will have regulation. And I would want to preserve the right of the Legislature to enact those regulations.

**DELEGATE BERG:** Would you yield to one more question? Do you find in this section any right reserved to the Legislature to regulate strikes or collective bargaining?

**DELEGATE HELIKER:** Well, this proposal is the language of the National Labor Relations Act, Section 7, under which the Congress of the United States has extensively regulated the right to strike and all other aspects of the collective bargaining relationship.

**DELEGATE BERG:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I rise in support of the Joyce Amendment. I think if you properly read this Section 4, in spite of the comment that it does not include the right to strike, it is certainly broad enough to include it under the words "and to engage in other concerted activities". I don't believe that this Convention, at this time, desires to recognize the right of public employees to strike. I don't believe that the section, as it's proposed, would permit the Legislature to distinguish between, for example, police departments and street crews. I think that if you adopt the section, you will be in effect adopting an unquestioned right to strike by any public employee regardless of the nature of his position. I, therefore, agree with Mr. Joyce; this is a legislative matter and should be left to the Legislature, where it can be, as he says, fought out another day.

**CHAIRMAN GRAYBILL:** Mr. Swanberg, are you up? Very well.

**DELEGATE SWANBERG:** I'm up, Mr. President; I'm not sure that I'm awake. I would simply like to state that the Joyce amendment is in complete consonance with the majority report here on this collective bargaining matter. And I am in total agreement with the comments just made by Delegate Berg. And for this reason, I would support the Joyce amendment to delete.

**CHAIRMAN GRAYBILL:** Mrs. Speer.

**DELEGATE SPEER:** I—Mr. Chairman. It has been said in comments just recently that this right of collective bargaining is taken for granted now. But I would point out that the Legislature, at least in the last two sessions, has refused to grant the right of collective bargaining to public employees. I think this is a fundamental right of the worker, and the worker has a right to participate in determining the conditions of his labor. The labor is all that the worker has to contribute in our economic system, and I think he should share in the regulating—in determining the various matters that concern laboring conditions.

**CHAIRMAN GRAYBILL:** Now, the Chair wants that corner cleared over there. Young man, you're standing there; I can't see Mrs. Speer; I can't see the other people. The Chair has asked a dozen times to keep the back row cleared. If we have to station a page, we'll do it. Secondly, I apologize for the fact that Mr. Cate's amendment—it's not his fault—but I apologize for the fact that it's put out in the middle of debate. It's not supposed to be. It can be put out at noon. I'm trying to keep this debate clear so we can understand each other. Now, if all the pages and everybody else will sit down, we'll go ahead.

Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman. I rise in opposition to Mr. Joyce's motion to delete. Mr. Chairman, the right of employees, whether in the public or private sector, to band together to bargain collectively is indigenous to a free society. Until we give them this right in the Constitution, they are second-class citizens. They're second-class to their brethren in the public sector. Mr. Chairman, I think that—until we give them this right, they remain second-class citizens. They remain unable to seek the opportunity—the economic benefits that their brethren in industry receive. Mr. Chairman, I think that is an important constitutional matter that we give them this right that their others—that their brethren have, to band together to bargain collectively with their employer, whether he be the state or a private individual. For that reason, Mr. Chairman, I will oppose Mr. Joyce's amendment.

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman. I think that after all these days of debate on some of these issues, that we ought to leave something up to the Legislature, and this looks like a good one for them to bite on. And I support Mr. Joyce's amendment.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President [Chairman]. I rise in support of Mr. Joyce's amendment. I've noticed over the years that whenever there's a public job comes up for—or is open for employment, that we have all kinds of applications. So they apparently must agree that these positions are pretty good. The next thing is that most all public employment is set by a physical [sic] budget and you have to live within these budgets. And if there is a move to strike or form a collective bargaining system, then you have to adjust these budgets to fit this. And the very fact that people seem to regard most of these public positions, with their public employment retirement systems and all the benefits that goes with them, it seems that these are highly regarded positions, and I question if it is in public interest to have collective bargaining or the right to strike. I sincerely approve of Mr. Joyce's amendment.

**CHAIRMAN GRAYBILL:** Very well. Unless—if there are further people who wish to debate this, we'll adjourn. If not, we'll vote. Mr. Heliker, are you going to debate? Are you going to debate, Mr. Heliker?

**DELEGATE HELIKER:** Yes, I will.

**CHAIRMAN GRAYBILL:** Very well. Mr. Eskildsen, let's have a motion to adjourn. Mr. Eskildsen, let's have a motion to recess until 1:25.

**DELEGATE ESKILDSEN:** Mr. Chairman. I move the Convention stand in recess until 1:25 this day.

**CHAIRMAN GRAYBILL:** The motion is to recess until 1:25. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**UNIDENTIFIED DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered.

(Convention recessed at 11:49 a.m.—reconvened at 1:40 p.m.)

**CHAIRMAN GRAYBILL:** The Committee will be in order. Ladies and gentlemen, before the noon recess we were discussing Section 4, and the situation was—Section 4 of the Labor Article, on page 32—and the situation was that Mr. Studer had moved an amendment that public employees should not have the right to strike and Mr. Joyce had moved a substitute motion to delete Section 4 in its entirety. Now, we were debating the Joyce motion. Now, I know we have these other two things laid over, but I want to finish Section 4; then we'll go back to the two things that were laid over. And I think Mr. Heliker had the floor, if he wants it.

Mr. Heliker, you have the floor, if you want it, on the motion to delete Section 4.

**DELEGATE HELIKER:** Mr. Chairman, members of the committee. I wanted to respond to some of the things that various people have said. With regard to Mrs. Blend's comment that collective bargaining is well established by federal and state law, this is true as a general proposition; but there are still quite a few people left out in the cold, and it's those that we are trying to get to here, and put them on the same footing with the majority. Now, I oppose Mr. Joyce's motion to delete. He argues that it's legislative. This, of course, is the argument that everyone makes against anything that they oppose. He argues also that it's somehow related to the Studer proposal. I cannot see this at all. I think they're entirely different matters. We're asking here that you provide a general, broadly stated protection of simply the right of organization and collective bargaining. Mr. Studer is asking for a very specific regulation on collective bargaining, which is, in my opinion, no way similar. This problem of collective bargaining by public employees, which worries Mr. Wilson somewhat, is a problem that is already with us. Collective bargaining, organization of public employees into unions, and the demand for collective bargaining is increasing by leaps and bounds. And, as Mr. Holland pointed out, the status of collective bargaining in the law of Montana is at the present time uncertain. We are asking that this uncertainty be cleared up and that the public employees, along with those private employees not covered by federal law, be given clear right to organization and collective bargaining. Now, it may be probably obvious that I am primarily concerned with the public employees, and I just ask you, why should the public employees be the orphans of the labor force? Why shouldn't they have the recognition of the right to organize and bargain collectively that most private employees have? Now, there's another aspect of this matter that I want to bring to your attention and that concerns me very much, and that is the relationship of this proposition to the proposal which we will be considering shortly concerning a merit system for state employees. I feel very strongly that we need a merit system. A lot of people feel this very strongly. The Legislature has wrestled with the problem several times—as a matter of fact for a very long time—without successfully passing a law. We have a proposal which would give them a little nudge in the direction of passing such a law, but the basic problem that's confronted the Legislature here is that we do not have a clear recognition of the right of public employees' unions to a significant role in the merit system, whatever it may be. And I think these two things should be considered together and that we should—I think we should pass a mandate to the Legislature to enact a merit system law, and I think we should, along with it, pass a recognition of the right of organization and collective bargaining of public employees, so that the Legislature can get over this hump and write into its merit system law a provision for a clear role for collective bargaining. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Will Mr. Heliker yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Heliker?

**DELEGATE HELIKER:** I yield.

**DELEGATE ROBINSON:** In addition to Hawaii, how many states have in their constitutions the right for public employees to bargain collectively?

**DELEGATE HELIKER:** I couldn't tell you.

**DELEGATE ROBINSON:** How many states have the right recognized in statutes of public employees to bargain collectively?

**DELEGATE HELIKER:** I couldn't tell you that, offhand, either.

**DELEGATE ROBINSON:** All right.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** May I close?

**CHAIRMAN GRAYBILL:** Mr. Joyce, you may close.

**DELEGATE JOYCE:** Mr. Chairman and members of the committee. I suppose that the issue now before the house is one of philosophy as to what a constitution should contain, and of course George Heliker and I are philosophically opposed to what should be in a constitution. And he uses the argument that if you're opposed to it, it's legislation, and if you aren't, it's constitutional. And I submit that that is not my position at all. I'm not opposed to the public employees having the right to bargain, but it seems to me that you don't have to write everything into the Constitution in order to give that. And in reply to my distinguished colleague from Silver Bow, who is a good friend of mine and with whom I visit all the time; have lunch with very frequently. And we violently disagree about everything, perhaps, but still we're good friends because we realize that this is a free country and everybody can think as they so desire. And he may be right and I may be right, and maybe both of us are wrong most of the time, but that's the way it goes. At any rate, I'm not opposed to the public employees having the right to bargain, but it seems to me that it is perfectly apparent that it does make a difference when you are bargaining with the public, because even Franklin Roosevelt didn't believe in the right of public employees to strike against the government of the United States. And every time a case comes up, why, they always quote President Roosevelt in that connection. And so it seems to me that the public employees ought to have the right to bargain and they ought to have the right to bargain in accordance with procedures that are established by law. And it seems to me, further, that if the Legislature won't pass such an act, it's because labor doesn't have the muscle to get it through the Legislature; and so what they've got to do is get more muscle. But at any rate, that's where all of the battles are fought is in the legislative halls, and sometimes you win and sometimes you lose. And I'm perfectly willing to let future generations of Montana battle this out in the Legislature. I see no particular reason why this should be granted in the Constitution. It may do more harm than good; and it seems, further, to me that it will damage the Constitution. The more legislation we write into the Constitution, the more opportunity we're giving those who are opposed to any change in the Constitution to defeat it. And I've spent 2 months over here and I haven't won all my points, but I'm still for the Constitution that we've written. I think that we've made some great strides. We have opened up the Legislative Article so that the Legislature can, in fact, legislate and solve Montana's future—problems in the future. We've opened up their right to tax, and I've opposed any restriction on that. I have made everybody in the room mad at me, I suppose, from one time or another. I believe they ought to have the right to tax so that we can solve our problems as we go along in the future, and that's all that a Constitution should be. It should be politically neutral. It shouldn't favor labor; it shouldn't favor management. It shouldn't favor the school teachers; it shouldn't favor the farmers. It shouldn't favor the agricultural people; it shouldn't favor the city people. It ought to be neutral so that when and if, as future generations come along, they can fight these battles another day, as I keep saying. And after all, I don't have all the wisdom of the world, egotistical that I am; I really can't solve all the problems of the world here in this Convention. And I submit that if any—each of you look into your hearts, you might very humbly say that there may be one or two that you can't solve either. Some people want to solve them all right here and now. And frequently, however, when you set about to solve all the problems of the world, you create more problems than you intend, because you write certain language that seems to solve them all now and then a situation comes up that you didn't think about and, of course, instead of solving the problem you've just created new ones. And so, in closing, while I may have made a political mistake in my hometown—I really don't think so—but even if I have, it's like Harry Truman says, "If you can't stand the heat, you ought to stay out of the kitchen." And further than that, I say that I have resolved—I have assuaged my conscience in his connection in that I have taken to heart the words of Kipling, that if you can keep your head when all about you are losing theirs and blaming it on you, yours is the world and everything that's in it; and which is more, you'll be a man, my son. Thank you. (Laughter)

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Joyce's substitute motion that we delete Section 4, on page 32, in its entirety. Do you want a roll call vote?

**DELEGATES:** Yes.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of deleting Section 4 on page 32 in its entirety, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Will you cast the ballot, please.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Nay |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Absent |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |

| | |
|---|---|
| Foster | Aye |
| Furlong | Nay |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Absent |
| Murray | Absent |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Absent |
| Siderius | Nay |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 63 delegates voting Aye, 29 voting No.

**CHAIRMAN GRAYBILL:** 63 delegates having voted Aye and 29 having voted No, Section 4 is deleted in its entirety. As I explained at the beginning of this debate, with it goes Mr. Studer's amendment; and I think that takes care of Section 4.

Mr. Heliker.

**DELEGATE HELIKER:** Is a substitute motion in order?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE HELIKER:** I move, as a substitute motion for the motion just deleted, the language of the original proposal plus the following language. Eliminate the period at the end of the last sentence and add: "subject to reasonable regulation as provided by law".

**CHAIRMAN GRAYBILL:** Very well, Mr. Heliker has a substitute motion for the right to organize and collectively bargain, which shall consist of the language on page 32, lines 9 through 14, with a comma at the end, plus the language "subject to reasonable regulation as provided by law".

Mr. Heliker.

**DELEGATE HELIKER:** A number of delegates expressed the fear that the last clause of this proposal would guarantee the right to strike. I wish by this amendment or change to lay that fear at rest by making it explicitly clear that the Legislature may regulate.

**CHAIRMAN GRAYBILL:** Is there—

Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President [Chairman], this is just a kind of little back-doorway coming in there, it looks like to me. They'll still retain in the Constitution the right of public employees to bargain collectively, and I think this is the main thing. And all you've did now is just turn around and said the Legislature can write a little rules. I think the intent's exactly the same as the last one.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, I think Mr. Heliker has now confirmed what Mr. Joyce contended by the last vote—that it's statutory. You just added that fact to it, so I think it should be defeated.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Heliker's motion—substitute motion—that we add a Section 4, Right to organize and collectively bargain, consisting of lines 9 through 14, which was the majority—the minority proposal, together with the phrase at the end, "subject to reasonable regulation as prescribed by law", so it says: "and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection, subject to reasonable regulations provided by law". Do you want a roll call?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** Very well, so many as are in favor of that motion, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |

| | |
|---|---|
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Absent |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 29 delegates voting Aye, 66 voting No.

**CHAIRMAN GRAYBILL:** 66 delegates having voted No and only 29 having voted Aye, the motion is defeated and Section 4 is again out. Now, ladies and gentlemen, we agreed to take up, at 1:29, Section 3, which was the language on the 8-hour law on page—what? Oh, it's Mr. McCarvel's amendment.

Mr. McCarvel, are you prepared on Section 3, your 8-hour law?

**DELEGATE McCARVEL:** Mr. Chairman, I was hoping to have from the printing a substitute for—amendment for my amendment.

**CHAIRMAN GRAYBILL:** Well, Mr. McCarvel, let's find out if the printer has got it up yet. And send—let's send a page and find out.

**DELEGATE McCARVEL:** All right, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Cate, the—my point is that Mr. McCarvel wants to substitute other language for his, and we can start with his. I realize you have an amendment here, but he was the moving party this morning.

(Pause in Proceedings)

**CHAIRMAN GRAYBILL:** Will the committee be in order. Members of the committee, this morning we postponed consideration of Section 3 after we'd adopted it, so that it could be worked over during the lunch hour. And we are now ready to consider Section 3, and I understand that Mr. McCarvel has some new language to propose. And the material being passed out to you should be styled—you should put a "Section 3" at the top of it so you know what it is—Section 3, under the Labor Article. Very well, Mr. McCarvel, do you want this read from the rostrum?

**DELEGATE McCARVEL:** Yes, Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Very well, will the clerk please read the proposed language.

**CLERK SMITH:** "Section 3, Eight-hour day. A maximum period of 8 hours shall constitute a regular day's work in all industries and employment, except in agriculture and stockraising. The Legislature may, however, change this maximum whenever, in its opinion, the change will better promote the general welfare. Signed: McCarvel."

**CHAIRMAN GRAYBILL:** Mr. McCarvel, are you proposing this as a substitute for the language you had this morning?

**DELEGATE McCARVEL:** Yes, Mr. Chairman. I had pointed out to me some flaws that was in the original proposal that I made, especially in the voluntary agreeing to work, which may entail a new employee being employed may be coerced, actually, by an employer to agree to work 10 hours in order to secure employment. So I think that the language in this amendment to that article should clarify that and take care of the situation. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the Chair will allow the language that's been placed before you as Mr. McCarvel's substitute motion for the language that we passed this morning, and the issue is open for discussion.

Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. Since I opposed the original wording of Delegate McCarvel, I would like to say at this time that this is—seems perfectly acceptable to me, and also the bees in central Montana. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there other discussion?

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President [Chairman], I would like to say that I also support this. It gets rid of some of the problems that was in the original language, and I think that this is one of the things that our laboring people have wanted and have fought for for years. And I think it is a safety factor for our laboring people to have this 8-hour proposal written into our Constitution, and I support it.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. McCarvel's substitute motion to substitute this language for that that he proposed and that we tentatively passed this morning. Do you want a roll call vote?

**DELEGATE McCARVEL:** Yes.

**CHAIRMAN GRAYBILL:** Very well, all in favor of the new language for Section 8 that you have—or for Section 3, 8-hour day, that you have before you, vote Aye on the voting machines; all opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Absent |
| Bugbee | Absent |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Absent |
| Driscoll | Absent |
| Drum | Nay |
| Eck | Absent |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Absent |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |

| | |
|---|---|
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Absent |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Absent |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. Chairman, 74 delegates have voted Aye, 13 have voted No.

**CHAIRMAN GRAYBILL:** Very well, Mr. McCarvel, will you move that when the members of this committee do arise and report, after having had under consideration Section 3 of the Labor Article, as amended, that we recommend the same be adopted.

**DELEGATE McCARVEL:** I do so move, Mr. Chairman.

**CHAIRMAN GRAYBILL:** You've heard the motion. All those in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** Section 3 is adopted. Now, this morning we had before us Section 2 on the merit system. It's on page 9. We deferred it until 1:30. Mr. Heliker, are you prepared on that at this time? Oh, I guess this is Mr. Scanlin's. Is Mr. Scanlin—do you care to take it now, Mr. Scanlin?

**DELEGATE SCANLIN:** Mr. Chairman, I repeat what I said this morning. I wish to withdraw my support of this section. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Mr. Heliker—or Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman, if the section is before us, I would like to make a motion that it be deleted in its entirety. Is the section before us?

**CHAIRMAN GRAYBILL:** Mr. Heliker, will you place the section before us?

**DELEGATE HELIKER:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 2 of the Labor Article recommended by the Public Health, Welfare, Labor and Industry Committee, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman, I move that the section be deleted in its entirety. Mr. Chairman, it's statutory. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the motion is to delete Section 2 in its entirety. Is there discussion?

Mr. Harper.

**DELEGATE HARPER:** I'd just like to point out, Mr. Chairman, this does not say that we establish a merit system in the strict sense of the word. It says that we establish a system under which the merit principle will govern the employment of persons by the state. We have a choice, I suppose, in the state of using the spoils system, or using some kind of lottery approach to gaining employees, or establishing some kind of a workable system where merit in employment does count. And it seems to me this article as written, or Section 2, tries to speak to that issue. And I just simply rose to keep it alive a little bit longer here, so—call your attention to the fact that we're voting on this and not a merit system, per se.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, I arise to oppose the substitute motion. I'm going to make—attempt to make some distinctions to why this is not statutory, but I'll admit initially that it borders on it. I think it is not, for these reasons. First, it merely sets forth a concept; it doesn't even contain any major details as to how that system would be carried out. Secondly, I think it's not statutory because I think it sets forth the concept that we could support for the next 80 years. To me, all it says is that people will be hired by the state government on the basis of what they can do, rather than what they know, and I think this has been a real problem in state government in the past. And to illustrate that, I would like to talk a little bit about the Attorney General's office, since this is the only field I know anything about. The Attorney General's office is an elective office, you know, and the Attorney General is elected every 4 years, so the attorneys employed in that office never know if they can work there for more than 4 years. And as a consequence, they always have the young attorneys fresh from law school there, and I think it was our present Governor who made the statement—and I hate to admit it, being a young lawyer—but that an old lawyer can do more in 2 hours than a young lawyer can do in 2 weeks. I hope all the potential clients here don't run to Mr. Habedank and Mr. Davis and Mr. Kelleher and my other older brothers. (Laughter) But that is—

**CHAIRMAN GRAYBILL:** Thank you, Mr. Loendorf. (Laughter)

**DELEGATE LOENDORF:** And Mr. Graybill. (Laughter) There's a lot of truth in that though. When you—when a young lawyer gets out of law school, he doesn't even know his way to the courthouse. I wouldn't even know where it was in Missoula, except we were required to go up there at one time during the 3 years I was there. But a merit system, as I understand it, would allow a person to plan on having a career in government and that attorneys—and I assume we have the same problem in other fields—if they chose to go to work in the Attorney General's office, could plan on staying there if they liked that type of work. Now, they work there for, I would guess, a rough average of about 2 years. The present Attorney General, I know, has had at least a hundred percent turnover since he's been there. I know he employs no more than six or seven men; and I have listed the names here of two, five, seven who I can remember that have left there in the last three and a half years, and I think probably there may have been more. So I think a merit system could do a lot for the state in the way of allowing experienced employees to work there. As the situation is now, the state is deprived, I think, of the benefit of a lot of expertise. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. President [Chairman], I understand that the 25,000 members of the Montana Public Employees Association have requested that our group help them in giving constitutional authority to some systems of merit employment system. Their organization contacted 30 other states to find out if they had any system of civil service or merit system existing, and out of those they contacted, only Montana and North Dakota had the old spoils system; the other 28 states all had professional personnel agencies which recruited, examined, tested, and qualified applicants for public employment. It's a matter of fact that only 13 other states do have constitutional enabling authority for merit system today. The truth of it is that most of our constitutions in this country were enacted long before they had this system, and there have been very few constitutional conventions since. I think that it's extremely important that we protect our 25,000 employees in Montana in public agencies by listening to their request for a merit system. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman. As a member of this committee, during our hearings there was several different testimonies for, and the one that I think most of the committee went by was from Senator Bertsche from Great Falls, who explained that this system had been introduced, worked on for the last 6 years, and the proposal—the merit system as a whole—had gone to the House and the Senate last year, and that he expressed his concern that if we put this into the Constitution, it might enhance—or might hinder any chances of it being passed in the next Legislature. So for this reason, I will go along with Senator—or Delegate McKeon with his motion for deletion.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, could I ask Mr. Loendorf a question, please?

**CHAIRMAN GRAYBILL:** Mr. Loendorf?

**DELEGATE LOENDORF:** I yield.

**DELEGATE BOWMAN:** Mr. Loendorf, would it be your feeling that merit system should include schoolteachers in the public school system, and possibly University people, also?

**DELEGATE LOENDORF:** The Legislature can establish it, and that's up to them to determine the scope of it.

**DELEGATE BOWMAN:** Could I ask you one more question, please?

**DELEGATE LOENDORF:** Yes, I yield.

**DELEGATE BOWMAN:** You—all right—

**DELEGATE LOENDORF:** I'm on my feet anyway.

**DELEGATE BOWMAN:** The other question I'd like to ask is, do you personally feel that it should include those two areas?

**DELEGATE LOENDORF:** I think—that's the thing I want to avoid in the Constitution, is getting into this specific detail. I think we have to leave that to the wisdom of the Legislature.

**DELEGATE BOWMAN:** Okay, thank you.

**CHAIRMAN GRAYBILL:** Mr. Arbanas was up next.

**DELEGATE ARBANAS:** I—Mr. Chairman, would Mr. Loendorf yield for a question?

**CHAIRMAN GRAYBILL:** Mr. Loendorf, will you yield?

**DELEGATE LOENDORF:** I yield.

**DELEGATE ARBANAS:** During the early part of the Convention, I had many side-aisle fights on the merit system. I was going along with it very much, and every time it came up people argued against me, said that, well, when it's all said and done, it's a way of keeping from firing the incompetents. Now, how do you—in other words, it's a way of keeping employees who are incompetent on their jobs. And I think that's the way it comes off to about 80 percent of the delegates. Do you have an answer to that?

**DELEGATE LOENDORF:** Yes. I think merit is just the opposite. It's a system that is based on competence.

**DELEGATE ARBANAS:** That's what I thought, too.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** When we met with the Department of Administration in the Executive Article—or Executive Committee, he made the statement which impressed me very much, that "When all is said and done, the chief problem in state government is the people problem—the employees who work for the state." And I think that we have a real choice of continuing a spoils system or a merit principle. I like the article because it doesn't talk about a merit system; it talks about a merit principle; and many, many forms can be tried and worked toward that goal. But I think we do have a choice, and I think it's not a small problem in state government.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman, fellow delegates. I think by adopting this merit system, it would be a step backwards, now actually, from [for] many public employees. And I would oppose this quite heartily. Now, one of the big things that you'll find here is that there is collective bargaining in certain areas. Should this be put into the Constitution? Should it be used as the law of the land? Then I think we're going to run into a problem in these areas where we do have collective bargaining, and I do think it's a step backwards. We've already turned down collective bargaining because we've called this statutory. I think that this is much more statutory, and I think it would and will step on—in certain areas. And I think where public employees have the right to bargain collectively that this would be very harsh and could be interpreted whatever way you—whatever way the courts want to afterwards, as to whether they should have the right to bargain collectively. And I ask that this Convention turn this down. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** As a member of the committee in consideration, I was one of the members of the minority that resisted this motion, and I would like to point out again Senator Bertsche's testimony. The Senate now has under consideration a merit principle for consideration at the next Legislative Assembly, under which the merit system will be presented. And I think we can all agree that things such as enthusiasm have to do with merit; and I think we all can agree that things such as industry on the part of the employee have to do with merit; and I think we can all agree that the ability of that particular individual to cooperate and get along with his fellow employees has to do with merit. We have here a provision that states that the merit principle shall be used. Now, suppose that the bill that's presented does not include any provisions for testing enthusiasm; does not include any provisions for testing the man's industry; and does not include any provisions for testing the man's cooperation. That bill would provide every legislator with a good opportunity to vote against it. They would say, "It does not meet the constitutional requirements of a merit principle"; and this is the thing that Senator Bertsche was getting at. He said, "This bill is going to be hard to pass if we submit it and you put something in the Constitution that some of the legislators can hang their hat on to vote against, they'll do it." And I think if we put it in, that's just what we'll do; and that's the reason we resisted it in committee—that is, the minority.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Will Mr. Loendorf yield for a question?

**CHAIRMAN GRAYBILL:** Mr. Loendorf?

**DELEGATE LOENDORF:** I yield.

**DELEGATE HOLLAND:** When I look at this merit system, I can't help but think of civil service. What are the differences?

**DELEGATE LOENDORF:** Between merit and civil service? I don't know that there's a distinction. Merit simply means, to me, employment based on merit. I haven't attempted to define civil service, but I would doubt that there's a distinction.

**DELEGATE HOLLAND:** This is one thing I came over here determined not to do, and that's create a new bureaucracy. One of the most upsetting things in the government of the United States, in my estimation, is the federal bureaucracy. And if we're going to create a system—I have no objection to hiring someone on merit, but when they're going to be retained just because they have seniority, I have a serious objection. One of my heroes, Senator—or President Kennedy, took office and he wanted to make certain changes. He'd issue an order and nothing would happen, just because of the entrenched bureaucracy. And I don't think we should have an entrenched bureaucracy at the state level, and we surely shouldn't make it mandatory. And I point out to the Convention this is mandatory—"shall create a system of merit". We're mandating the Legislature to create a state bureaucracy. And I certainly would support Mr. McKeon in entirety in striking this from the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I rise in support of Delegate McKeon's motion. It seems to me that the section as written really doesn't say anything anyway. It establishes a principle. It's purely legislative. It's up to the Legislature to decide what sort of a merit system they will put in, if they decide to do so, and in which departments. It seems to me it runs contrary to the whole principle of the executive reorganization, in that we provided in there that the heads of these departments will be appointed by the Governor, subject to the confirmation by the Senate, and serve at his pleasure. And that's—the very point is, the difference between the spoils system and the merit system, I suppose, depends on your point of view. When the Republicans come into power, us Democrats—and fire all the Democrats, us Democrats think that that's the spoils system. And conversely, when the Republicans come—the Democrats come in and fire all the Republicans, then the Republicans say it's the spoils system. But the fact of the matter is, I think, that the intelligent people in both parties know that that's not the situation. In the testimony before our committee, Governor Babcock conceded the right of Governor Anderson to remove his key employees. Governor Anderson, it's—when he testified before our committee, thought that it was inherent that the Governor ought to be able to bring his own people in and shape the policy of government. Presumably the people—when they do vote for a change, they're voting for a new direction, and it seems that to write a merit system into the Constitution would be foolhardy. The Legislature can, if they wish and in their wisdom, establish some sort of a merit system in various departments whereby people would retain their clerical positions, but I don't see that we should require them to do so in the Constitution. And further than that, I agree now with Delegate Holland that any employee who works for the state government who gives a full 8 hours for the government is, in fact, retained. There are many people who have worked for the State of Montana through one administration and the other without being discharged, and that it seems to me that that is as it should be. But any time the employee feels that he should be able to subvert the policy of the elected officials, why, then I think that he should not have that right and should go out. And so, therefore, I'm back, I hope, in the good graces with my friends in that I support striking this because it's clearly a legislative matter.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman, will Mr. Swanberg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Swanberg?

**DELEGATE SWANBERG:** Yes.

**DELEGATE BUGBEE:** I found it very interesting what you said about Senator Bertsche because he, certainly more than anyone else in the state, has been behind getting a good merit system. He's been working on this for several sessions, and the fact that he does not want this article in this Constitution—the question I want to ask you is, does he feel that this will be passed in the next Legislature? Does he feel encouraged about the way things are going with his merit system plans? Did he talk—

**DELEGATE SWANBERG:** I couldn't answer that with any certainty, Mrs. Bugbee. I do know that he appeared before our committee when we considered this, stated that the whole problem of the merit system is under study by his Senate study group; and he strongly advised us against putting anything in the Constitution, for the reasons that I have stated.

**DELEGATE BUGBEE:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** I find it hard to believe that including a directive in the Constitution for the Legislative Assembly to establish a system under which the merit principle will govern the employment of persons by the state will hurt the chances of a merit system. That logic really totally escapes me. I actually am not really coming down hard on either side of this. It's just that, in the halls and around today, I've seen this thing washed back and forth. "If collective bargaining goes in", the labor support people said, "then we'll support the merit system"; and I guess the hackles rose a little bit on the back of my neck to think that we're trading back and forth on constitutional principle. Mr. Joyce awhile ago was against something—collective bargaining—because it's legislative. He redeemed himself a little bit at the end of his speech, but he started out by saying, "Well, this only states a principle", and I found that a little hard to say. Now—but I'm glad that everybody's back in each—everybody else's good graces. Now that the thing has been aired, though, and we see what it actually says, maybe we can vote on it. As a person who lives here in Helena and just watches as sometimes good people are shunted in and out of jobs for no other reason other than the political climate changes, I find myself, as a citizen, saying, "Why can't we establish some kind of a system in our government where a person's merit on the job will have something to do about his staying on the job?" Now, I never have been greatly enamored of the spoils system. Mr. Joyce says that if you're a Democrat and the Republicans push you out, it's a spoils system; but if you're a Democrat and the Democrats push you out, it's not. I'm speaking as an Independent. Looks to me like it's the spoils system working both ways. We see it wash over this community and over the state offices here about every 4 years when there's a change in the executive government, and I just don't think it's a good way to run a railroad.

**CHAIRMAN GRAYBILL:** Mrs. Van Buskirk.

**DELEGATE VAN BUSKIRK:** I would like to answer Mrs. Bugbee. I personally also think that this should not be in the Constitution, but I did sign the majority report because I knew there was enough interest among the delegates and it should come on the floor for debate. But when I was talking to the senator, he said that they had been working on it for the last two sessions and at presently the report had been up to 96 pages and there were still a lot of bugs that had to be ironed out. And he said, "Whatever you do, don't force our hands, because we are working on it, and eventually they will come up with something." But I would like to tell—the last time I was home, I had a meeting with the city, county, and educational people, and one of the college professors was telling me that the state that he came from, he took a test for civil defense and out of the hundred and fifty questions, there were only 15 that related to civil defense. And an accountant came out with the high score; and when they went in for a personal interview, he went out talking to the other men that were asked to be there for an interview, and his first question is, "What is civil defense?"

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, may I direct an inquiry to Delegate Harper?

**DELEGATE HARPER:** Yes.

**DELEGATE ROMNEY:** Friend Harper,

can you tell me what the percentage of turnover in this Capitol building and in the Capitol complex has been in employees in the last 10 years?

**DELEGATE HARPER:** No, I can't.

**DELEGATE ROMNEY:** May I ask another question, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Harper, in view of that, why so much consternation concerning the spoils system in this edifice?

**DELEGATE HARPER:** Because I know there have been some, and I don't know—I never have checked up—I don't know how many employees we have, and I just couldn't answer your question as to what the percentage is.

**DELEGATE ROMNEY:** Mr. Chairman, it has been my observation from hanging around this place for a number of years that most of the faces have become very familiar. I think that they've been here for a long, long time. I don't think the spoils system is operating as efficiently as it should be. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. President [Chairman]—sorry to disrupt the proceedings because I dropped all my papers. You know, we've had a merit system in Montana for a long time, and I can confess to being present at the birth of the system. In 1937—some of the people around here will laugh when I say this—I was a labor leader in Great Falls, a member of the executive board of the Cascade County Trades and Labor Assembly, and I came down to Helena to protest the manner in which welfare was being distributed in the State of Montana. And there I met one of the greatest public servants that we had in the State of Montana. I.M. Branjord, who many of you will remember—the old-timers, at least—was on the State Land Board for many years and then became Director of the Welfare—Public Welfare in Montana. And as I came down and protested the manner in which political patronage was used instead of—in—as a spoils system in the selection of people to distribute welfare, Mr. Branjord said, "you're just one of the men that we're looking for". And he said, "We're going to put you on a merit examining committee to start a welfare program—a merit service program in the Welfare Department." As a result of that, people in welfare are selected on the basis of their educational qualifications; they must take certain training; and I think we've had less and less trouble. Prior to that time, it was a constant state of affairs. The—as a result of that, and very particularly—I suppose it's federal interference—we now have a Merit Examining Board in the state which handles the Department of Public Welfare, the Board of Health, the Unemployment Compensation, and several other agencies. We have something going. It's been in process. We don't need to put it into the Constitution. And to indicate that we can do something about it, back in the 1953 Legislature, the Legislature adopted a personnel commission program and set up money for a personnel commission and a study that was made. And it was thrown out, but the tools are still available. We can make it. And I just want to make one other observation. When I went into the Governor's office with the Governor, as his Executive Secretary, in 1953, would you believe it that the only place where there were any spoils that we could satisfy the county political committees was in the Liquor Board, and that was the appointments at the various liquor stores. You've got pretty near a merit system presently operating in the State of Montana, and I think it would be better, and I certainly would agree with Senator Bill Bertsche—another great public servant—that we should leave it to the Legislature. And I favor Senator McKeon's—or McKeon's motion (Laughter) that we delete. I just promoted you.

**CHAIRMAN GRAYBILL:** Not too fast there, Mr. Martin. (Laughter) Mrs. Babcock—Mr. Martin would like one more word, Mrs. Babcock.
Mr. Martin.

**DELEGATE MARTIN:** As a native of Butte, I wanted to get back into the good graces of the Butte delegation. (Laughter)

**CHAIRMAN GRAYBILL:** That may be hard to do, Mr. Martin. (Laughter)
Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, I'd just like to point out that there's one employee for the state that has been in their employ for over 20 years. She's worked for five Governors, two of them Democrat and two of them Republican, and I think everybody in town knows the merits of Elsie Jones, the cook.

**CHAIRMAN GRAYBILL:** Mr. McKeon, do you want to close?

**DELEGATE McKEON:** Mr. Chairman, I didn't mean to be flippant when I made my opening remark that it was statutory and sat down. I thought that that comment alone would suffice. I appreciate the comments made by Senator Bertsche that—who was an ardent supporter of the merit system, that it shouldn't be locked into the Constitution. I would agree in principle with the merit system; however, locking it into the Constitution without providing for bilateral participation, that being participation with the employers and the employees, I think is a dreadful mistake. I think that when we have a merit system, we have to reach a delicate balance. I think the employer has to participate, and I think the employee has to participate. So I would hope that we would leave this matter to the Legislature. And I know that the Legislature will be working and has been working very hard on this matter, and I'm certain they will come up with that balance that we cannot create within the Constitution. May I have a roll call, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. McKeon's motion to delete Section 2 under Labor, the merit system. A roll call vote has been called for. All in favor of deleting, vote Aye; all opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot, please.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Absent |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Absent |

| | |
|---|---|
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. Chairman, 75 delegates have voted Aye, 15 have voted No.

**CHAIRMAN GRAYBILL:** 75 delegates having voted Aye and 15 No, Section 2 is deleted.

Mr. Kelleher, for what purpose do you rise?

**DELEGATE KELLEHER:** Mr. Chairman, I have a substitute for Section 2. It was an addition, and the Chair did not recognize me when Mr. McKeon spoke. And I'd like to substitute it now that the section has been deleted. It's the underlined words, "The state and local governmental units shall pay appointed employees an amount no smaller than that paid to employees of the United States doing comparable work". It's the last sentence—it's the underlined sentence of my amendment.

**CHAIRMAN GRAYBILL:** Mr. Kelleher—

**DELEGATE KELLEHER:** On page 9.

**CHAIRMAN GRAYBILL:** Mr. Kelleher, the Chair does not have it. Would you send it up? I have a new section and an amendment to—

**DELEGATE KELLEHER:** It's on the merit system, Section 2.

**CHAIRMAN GRAYBILL:** Yes. I don't have it. You withdrew it, Mr. Kelleher, I thought. Is that wrong?

**DELEGATE KELLEHER:** No.

**CHAIRMAN GRAYBILL:** It's not wrong?

**DELEGATE KELLEHER:** Sir?

**CHAIRMAN GRAYBILL:** Yeah, you withdrew that this morning. Do you want to renew it now?

**DELEGATE KELLEHER:** No, that was not the one I withdrew.

**CHAIRMAN GRAYBILL:** Very well, you want your Section 2 read. Very well, will the clerk please read Section 2, as proposed by Mr. Kelleher?

**CLERK SMITH:** "The state and local government units shall pay appointed employees an amount no smaller than that paid to employees of the United States doing comparable work. Signed: Kelleher."

**CHAIRMAN GRAYBILL:** No, read the whole section. He has to put in the whole section now. Read the whole section.

**CLERK SMITH:** "The Legislative Assembly shall establish a system under which the merit principle will govern the employment of persons by the state. The state and local government units shall pay appointed employees an amount no smaller than that paid to employees of the United States doing comparable work. Signed: Kelleher."

**CHAIRMAN GRAYBILL:** Very well, Mr. Kelleher has an amendment to put language in for Section 2, which we're dealing with, on page 9, the substance of which is to take the first sentence of the original Section 2 and add to it the language that the state and local governmental units shall pay appointed employees an amount no smaller than that paid employees of the United States for doing comparable work.

Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, it was my intention to delete that first section that you have before you, because we just voted it out, and just to substitute in its stead the last portion, the underlined portion.

**CHAIRMAN GRAYBILL:** Is that what you want to do?

**DELEGATE KELLEHER:** Yes, sir, that's what I want to do.

**CHAIRMAN GRAYBILL:** All right. Therefore, Mr. Kelleher does not intend the deleted Section 2 to be in. He only intends the underlined language—I think you all have it before you—he only intends the underlined language to be his amendment. That would be Section 2.

Okay, Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman. There is a great deal of difference between federal and state salaries, but there is—for doing the same type of work here in the State of Montana. And it is not fair to pay state employees—it is unjust discrimination to pay state employees a lesser sum than we are paying federal employees for doing comparable work, and there is really no rhyme or reason, even in the present system under the state. For instance, the Department of Revenue, a clerk-typist I receives $4,200; a clerk typist II receives $5,300; and for some strange reason, a clerk-typist III goes back down to $4,800. The comparable federal salary is $7,854. In the Department of Administration for the State of Montana, a clerk-typist I receives $4,300, whereas the average salary for a federal typist is sixty-nine and the low is 5,100 for the federal and 4,200 for the state. The overall general difference between the two is between $1,200 and $2,600 per year. That's all I'm going to say on the matter, Mr. Chairman. Could I have a roll call vote? Could I have five seconds, please? (Seconds stood)

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** I would just like to say for the benefit of the body that this was a delegate proposal that was considered by our committee. We discussed this with Mr. Kelleher for perhaps an hour, and it was the, I think, unanimous view of our committee that this delegate proposal should not pass because—for reasons which—I can't really remember them all now. But at any rate, we felt it was unworkable.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Kelleher's proposed Section 2: "The state and local government units shall pay appointed employees an amount no smaller than that paid the United States for doing comparable work." Are you ready to vote on that? I would hope—

Mr. Wilson, do you want to talk?

**DELEGATE WILSON:** Mr. President [Chairman], I'd just like to point out that the federal government is several billion dollars in the red; Montana is in the black. If you adopt this proposal, why, you're going to put Montana in the red. I worked in—had an administrative office in the state, and we just couldn't possibly keep up with the federal government in the pay raises that they required. There was no way that our budget could match the federal budget.

**CHAIRMAN GRAYBILL:** Very well, all in favor of Mr. Kelleher's motion that we substitute this language for Section 2, say Aye.

**DELEGATES:** No—a roll call.

**CHAIRMAN GRAYBILL:** Oh, you want a roll call vote? All in favor, vote Aye; all opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, please take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Absent |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |

| | |
|---|---|
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Absent |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Absent |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Absent |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 4 delegates have voted Aye, 88 have voted No.

**CHAIRMAN GRAYBILL:** Mr. Cate, for what purpose do you rise?

**DELEGATE CATE:** Mr. Chairman. Mr. Kelleher, one thing about it, you make some of us other losers feel real good. Thank you. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Kelleher, I'll give you 30 seconds.

**DELEGATE KELLEHER:** Wait till I ask for reconsideration on my legalized prostitution measure. (Laughter)

**CHAIRMAN GRAYBILL:** Very well, if you'll all turn with me to page 36. My memoranda says that the next man up is Mr. Studer. Will the clerk please read the minority proposal on Section—on page 36, and style it Section 5.

**CLERK SMITH:** "Section 5, Employment rights. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike." Section 5, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Studer, I understand you want to amend this before you debate it or discuss it. Is that correct?

**DELEGATE STUDER:** That's right, Mr. President [Chairman]. I think I'd probably do so at this time, before I make this motion to strike all but the first sentence.

**CHAIRMAN GRAYBILL:** In other words, you want to strike the right of employees, by and through labor organizations, to bargain collectively?

**DELEGATE STUDER:** I do.

**CHAIRMAN GRAYBILL:** And you want to strike the last one about public employees shall have the right to strike?

**DELEGATE STUDER:** Not have the right to strike.

**CHAIRMAN GRAYBILL:** Shall not have the right to strike.

**DELEGATE STUDER:** We don't have any public employees bill in now, do we?

**CHAIRMAN GRAYBILL:** Very well, Mr. Studer has moved to strike lines 13 to 16, except the word "organization", so that only the first sentence appears in his proposal. In keeping with our rule that we let people put in their motion—or their proposal in any form that they like, I would like to have the sense of the body. All those in favor of allowing him to so amend, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** Very well, Mr. Studer, you now have just the first sentence of Section 5.

**DELEGATE STUDER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** I move that when this committee does arise and report, after having under consideration Section—would this be 5?

**DELEGATES:** Five.

**DELEGATE STUDER:** —5, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. Chairman. First of all I want to say, in the debate here awhile ago, I also—I heard Delegate Champoux, I think it was, refer to some group or power behind the people that were making proposals in this right-to-strike debate in which I moved to eliminate—or to—I amended it to not give the right to strike to public employees. And I want to say here and now, before I start, that at no time any—did anyone come forward or ask me to put these bills in. I got into this trouble all by myself. (Laughter) I had no help from anyone that I didn't call on to either talk for me or help me. The right to work people at no time contacted me. I contacted them to get some information after I was in here. So I don't want anybody to start out with the idea that I had some power behind me in any way, shape, or form. I'm on my own; and that's the way I'm going to die, I guess. (Laughter) Mr. President [Chairman] and fellow delegates. I am very, very proud to be able to plead for this bill of rights for labor with you, and I'm just scared to death that I may not prevail when I have such a wealth of facts at my disposal and such a preponderance of rights on my side. Before I go into the history of unionism as it pertains to features that affect the bill of rights for workers, I will make a few comments relating to talks that we have had here in this Convention, which may help a little. The other night, John Gardiner appeared and he spoke, oh, a few evenings ago. And he said, and I quote: "It's time to open the doors and windows and give this country back to the people." Now, you know he was applauded heartily, and he could have been speaking just as sincerely about giving the worker's rights back to the worker. He also said, and I quote approximately, that "money talks louder and longer and drowns out others." And I think he could have been referring just as well to the terrific clout of the labor unions that we have here, and for the bill of rights for the workers. The *Montana Standard* the other day said Wade Dahood hit the nail on the head when he was discussing a right nearly—not nearly as important as the right of association, the right of privacy, and I quote: "He said as government functions and controls expand, it is necessary to expand the rights of the individual." Now, the *Montana Standard* gave Wade credit; said he hit the nail right on the head. He was discussing a right, and it was a right, and he had the right idea, and I certainly think it is no time to contract or reduce the rights of any individuals, or even to take them away entirely. Think about this a minute. Now, Supreme Court Justice Douglas, certainly not a conservative, said in 1950 in a court decision—and I quote: "The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, and to own property. It does man little good to stay alive and to be free and propertied if they cannot work. To work means to eat. To eat means to live." Well, that's the end of the quote. (Laughter) There's more—there's more, but that's all that pertains to this, and that's his feelings on this subject. Oh yes, and Delegate Dahood, in pleading for a unanimous verdict the other day—I get a kick out of this—he won a unanimous verdict the other day to convict for a misdemeanor, and he won his case. I just wish he was here in my boots now. With all the facts and figures that I've got here, he could win this thing hands down. Hell, it'd look like that last roll call. (Laughter) Now, I ask you—he did ask for this conviction by a unanimous verdict for a misdemeanor. Now, I ask you, is that consistent with what labor is doing to the minority. A minority—just think of it—a minority of labor can go into industry, an establishment, and come out with a 49 percent of the vote, and they've given their rights to bargain to 51 percent. And from then on that 51 percent can convict the rest of that bunch for life for paying 10, 15 dollars a month, whatever the dues are. And they've got a 49 percent minority, but they're convicted for life for a fine and they haven't done anything except give up some rights. They got maybe a fine of a hundred dollars or more right off the bat to join the union. Think about that, fellow delegates. The minority are only guilty of having decided to use an inalienable right of association, and they're fined 10 bucks a month for life, and probably deprived of the right to life, too,if they don't have a job and can't eat. Now, I'll talk about the majority having the rights to collective bargaining for all. This is a little more—goes back to 1935, when the Wagner Act, which is the National Labor Relations Act, was enacted. They—since then they have had the right to enforce a closed shop. But by that—by 1947, a little feeling had been built up in Congress to restrict their abuse of this right and other powers, and among the restrictions that were imposed then, in the Taft-Hartley law, was the clause saying in effect that compulsory unionism could not be enforced in any state which had laws preventing it. This is 14(b) of the Taft-Hartley law. I'll not go into the many battles fought by organized labor to repeal, but many of you should remember when Senator Dirksen of Illinois almost singlehandedly, in 1965, shortly before his death, rallied enough strength from the multitude of letters and wires and the voices of the people to soundly beat this terrific power of the union bosses that they—the mass to repeal this bill. And I remind you that Senator Mansfield was the loser on the—was the big gun on the losing side. When this law, 14(b) of the Taft-Hartley, came into effect, I think 11 states had the bill of rights for labor laws, and since then, 8 more states have adopted them. And I think there's either 8 or 9 with constitutions that have the Bill of Rights in their Constitutions—Bill of Rights for labor—sometimes called the right-to-work law. Let me quote you some of the opinions of some of the Senators and Governors of the state, in direct contradiction of what we've been hearing from the union bosses around here. And this is a pretty late bunch of quotations, but in Wyoming: "The right-to-work law is designed to restore full freedom of choice to the working man and woman of Wyoming. Also, it guarantees one of the most important hallmarks of American liberty and citizenship—the right of individual decisionmaking."—Clifford Hanson, U.S. Senator and former Governor. In Virginia: "The opposition to repeal of the right-to-work law is neither antilabor or antiunion. In this state, both industry and unions have expanded and prospered." In Tennessee—I only got a couple of these: "As I see it, we have had pretty good labor-management relations in this state. We have gained new industries because of our right-to-work laws. Industry knows that both management and labor will get fair play." In Nebraska—Oh, this was by Buford Ellington, the Governor of Tennessee. In Nebraska: "The most important function of our right to work is to safeguard individual freedom. Not surprisingly, however, it has also had a beneficial effect on Nebraska's economy."—Senator Curtis, U.S. Senator. Well, I can go on here for quite awhile, but I'll finish with Utah: "Under our right to work, Utah's economy has prospered as never before. There are more jobs at higher wages than ever before."—Wallace Bennett. I can also go back to Wyoming and cite you something that came up in our committee. Unfortunately, I lost the letter I had here to back it up, but I made the statement that since we'd worked in Wyoming since 1963 in the right-to-work law—came in there at that time—we heard argument after argument and thousands of dollars were spent down there by the labor bosses to try to keep that thing from going through the—to be enacted as a law in Wyoming—and they prophesied all the things that you're hearing here. And let me tell you, since they went in in 1963, the Wyoming union scales for the comparative classifications—in Wyoming, our neighboring state to the south, they have increased their union scale I think it's 7 percent faster than they have here in Montana, since 1963. And that's where the prophets of doom were really going to town. Of course, they had a Right-to-Work Committee going down there, too, I guess, and they put out a lot more stuff. But don't tell me they haven't been working against me here a little bit. Anyway, what I've just told you here from these Governors and Senators, from these various facts, doesn't jibe with the facts and the figures that the labor people have been trying to tell you, I'm sure. Better go where I can start again. Now, since I've been at this Convention, I've learned a lot, and I've missed a lot more, about taxation and education, environment, general government, and stuff like that. And I know that I certainly was not as educated on those things as I should have been, and I'm just taking it for granted that from here on in, a lot of you people are not educated in labor deals as much as I've been. So I'm assuming that, anyway. And do you know—I don't think a lot of you know a lot more about these labor problems than I did when I came in here. Just like one of my younger brothers—I've got to bring a story up here. We weren't too bright in our family, but this wasn't one of the brightest one of us, either, but—(Laughter) I remember—well, I'll go back into another story as long as you think that one was—(Laughter) We did have a—we had a pretty good family. I think there were nine brothers—I can't remember that far—

**CHAIRMAN GRAYBILL:** Just keep it relevant, Mr. Studer.

**DELEGATE STUDER:** There was nine brothers and one sister, and we were all sitting around the table, and we had a fellow come in for dinner, and he remarked to my Dad what a wonderful family we had, and this and that. And my Dad told him, "Well, yes, it's a remarkable family all right—look real good. But, sad thing, one of them is a little off." And of course the fellow said, "Well, that's sure too bad, Ed. I feel sorry for you." He says, "Well, that isn't the worst part", he says, "We can't tell which one it is." (Laughter)

**CHAIRMAN GRAYBILL:** Ralph—we might help him a little, Ralph. (Laughter)

**DELEGATE STUDER:** Well, that was a kind of a dirty one. (Laughter) Well, really, that isn't the story I was going to tell. (Laughter) This kid brother of mine—I'll get this all over with and then I'll get serious. This young brother did go in—he went in with this load of hides to sell. This was during those old dust bowl days. And she was really tough; and so he sent him into town with this load of hides, and then he gave him half a dozen chickens. He says, "Take them in, too", you know, "and get a little groceries. Flour and salt; you know, the staples—and sugar and stuff—whiskey and things that we needed."—(Laughter) And when he went in there, why, he was gone quite awhile, and when he came back, why, Dad went over and looked in the grocery box and there was nothing in there. He said, "Say, I thought—what's the matter here? You had some chickens and stuff there and you was going to sell those hides. What happened to the groceries you were supposed to buy?" Well, he says, "You know, I got in there and Joe says, 'You know the price of hides has gone down again, and by the time I pay the fellow for cleaning these up and taking them over to the station and shipping them to St. Louis, why, paying the freight', he says, 'I think you'll be about a dollar and a half short.' Well," he said—"so I gave him the other three chickens to pay for that. I gave him three, and then I gave him three and told him we'd bring him in another load of hides tomorrow." (Laughter)

**CHAIRMAN GRAYBILL:** I'm about to go to the Rules Committee, Mr. Studer. (Laughter)

**DELEGATE STUDER:** Well, our standard of living is much higher now than it was then, and wages and prices for things are 5 and 10 times as high. But I have a sinking feeling that our country and our economy and our working man, among other, other than a relatively few which are in the higher priced areas, and their relatively secure government jobs and the like, are in a very precarious position economically. And I place the blame for the great share of it at the door of the ruthless, power-hungry, avaricious, and short-sighted labor bosses who are at the top echelons of our unions. When union bosses for organized labor begin to flourish and expand and while our production lines are growing—were growing by uses of finer machinery and technology and new products and so forth were coming on the market, wage increases were only keeping pace with the increased sales and production and inflation was very little, except for the periods of war and shortage of labor. That's when our labor increases—all the fringe benefits and the like that were started—were added to a rapidly expanding economy, due to this technology and this stuff that I mentioned. And they didn't necessarily increase our inflation at all, because a fellow produces twice as much, why, you can afford to give him twice as much. There's no reason to pass on any costs to our society at all. To make a long story short, I will skip a little here and quote from the *Congressional Record* some stuff I just found out. They have introduced a bill there on this, and in one of the talks, Mr. Steiger of Arizona quoted—I'll skip some of that: Do you think union demands for higher wages and benefits will cause higher prices and more inflation, or can companies meet union demands without raising prices? This was a question asked by an opinion poll of the Research Corporation of Princeton, New Jersey. "Mr. Speaker, 63 percent"—well, he was talking to the House there—"63 percent of the union families in the country say that these demands do indeed cause higher prices and more inflation. These families instinctively know, as does the general public, that unrestrained union power is a key factor in bringing our nation to the brink of economic disaster. Most respected economists agree on this point. As Henry Hazlett noted, the government has been turned into a union organizing agency and virtually compels employers to make substantial concessions to union demands, no matter how unreasonable." This is all a quote of Mr. Steiger. "This resulted in the union wage freeze that is now melting into phase two of our new economic policy. Unfortunately, the new economic policy treats the symptoms of the problem, rather than the disease, and that is compulsory unionism, and that is one of the reasons why I am sponsoring a national right-to-work legislation." This has all been taking place while we're here. Writer John Davenport recently noted: "What ails the economy is not the free price and profit system as such, but the fact that it has afflicted in a single sector by a powerful and pervasive monopoly element. I refer, of course, to the power of the labor unions to force up wages and costs year after year, without regard to general productivity advance. The effective and courageous way to deal with union monopoly is a large-scale revision of our present permissive labor laws and their administration. This is the missing ingredient from the President's program; and had it been undertaken in good time, we might never have arrived at our present impasse. Americans everywhere are keenly aware that the nation's economy has entered a vital period. Action taken by us in the next few months will have a profound influence on the future of this country. Surely, excessive union power has steered the American ship of state to the brink of disaster, and this makes sound economic sense. It does make sound economic sense to eliminate the root, because of this unhealthy concentration of power, and that root is compulsory union membership. Anything else, to paraphrase a comment made by a nationally syndicated columnist during one of the recurring railroad crises a few years ago, would amount to be—putting a band-aid on a compound fracture. At the bottom of this whole thing," he noted, "is the vice of compulsory unionism." Well, he goes on with quite a bit of that stuff, but you won't be listening to me in about a minute. The facts are as presented to you here and by the paper I placed on your desk either yesterday or day before, that had a lot of quotes and a lot of facts and figures. I don't know if you all read them. I am not going to take the trouble to read them to you here now, because I know the longer I go, the—well, I won't be making any votes, I don't think. So there's no reason that we wouldn't prosper as these other states have, according to the figures on this sheet that I placed on your desk—all 19 of these right-to-work states have progressed faster economically than any statistic you can put in here that Montana has today in a compulsory unionism state. Now, that ought to show something to you. That ought to be argument enough right here, right now. If 19 states can do more economically for their society than we have done here without the use of this bill of rights for labor, why don't we get smart and adopt it? You know why? We've got that clout over our heads right now, and that is really one of the troubles. If we could just come in here and have the facts explained to us about a new deal, and I was bringing it up without having had it heard one way or another about this thing, and I was trying to sell you something, and I had all the facts that I have here as to where it had worked and how good it had worked previously in a hundred percent of the places I had sold it, I think you'd buy it. I don't know why you don't just go ahead and buy it from me now and raise your hands and say, "I'll go with you," and I could stop right here. The Bill of Rights for workers does not wreck unions; it stabilizes them. Justice Brandeis, a famous labor lawyer, said in part in a decision: "The unions attain a success when it reaches the ideal condition, and the ideal condition for a union is to be strong and stable, and yet to have in the trade outside its own ranks an appreciable number of men who are nonunionist." Now, this is from Justice Brandeis, who is a very famous old-time labor leader—lawyer—around 1905 or something—and he was quoted in this opinion here by Justice Frankfurter when he ruled that the Arizona right-to-work law was legal, in 1945. Now, Justice Brandeis also said a nucleus of unorganized labor will check oppression by the union, just as a union checks oppression by the employer. Now, nothing could be said much more simple than that. I don't understand why a fellow would want to even think that you can take the rights away from a minority of a group that have voted to give their collective bargaining rights to the employer and then from that day on say that that minority cannot work. It just seems so unreasonable to me that that's really why I brought up this right-to-work law here—what I got in here. I heard a—rights to do danged near anything—you've got the right, the inalienable right, you got all these rights, but you don't have the right to work. And the right to work is the right to eat, and it's the right to live. My God, if you don't eat, you can't hardly live. We can't all go on welfare. I think we should talk about the bill of rights for labor as it concerns us here in this Constitution. Some of you will come up with the old dodge that this is legislative. (Laughter) I got something written here on that. (Laughter) It's a red sheet here someplace. Well, anyway it's legislative all right, and I'll agree to it. But we also had a deal put through here that was legislative the other day, and I didn't like it a bit, and I'm looking right at the guy that put it through—Dahood, over there. (Laughter) And you know, he did. He got a law pushed through here, and he starts right out telling you that he knows it's legislative but he had a little grievance there. Well, I got a big grievance here. (Laughter) I don't see why, if we can sit right here and, with our great amount of judgment, go along and vote against something that is as important to the economic growth of this state—and I'm serious now—I don't see how we can possibly do it. It is just impossible in my reasoning to think that we could even think of doing such a thing when we've got all the facts and all the figures and all the reasons for going along with my proposal on my side. I don't know of anything that's been said against this right-to-work law, except that it's an awful thing. It just—what's an awful thing about it? The right to work? It isn't too bad. A lot of us got out of the habit, and we're getting the hell. (Laughter) This is a very important measure, and the fact that you're going to try to say it's legislative, I just hope you don't, because it's too important for the state at this time. And for anybody to come up here and try to oppose that, you're just—well, you're just sneaking out, that's what you're doing. (Laughter) You got—you aren't taking the issue at heart, and if you do such a thing—you can clobber it, probably. But it is not—it is legislative, but it's got no chance in the world of getting through this legislative body—the bodies that we're setting up, and if it's a unicameral system, it probably will have a little less because this clout is here. There's a fellow made a statement here a little while ago in his talk, Delegate Joyce, in which he mentioned he was endorsed by labor. Well, hell, an endorsement doesn't mean selling your life and your conscience and your—all of your thinking from now on, does it? If it does, I'd just as well sit down. I'm trying to convince the ones of you that feel like you've got to give your vote to labor. If you really want to give your vote to labor and not to the labor bosses, you'll go along with me. Because labor is who I'm fighting for. I have been for labor all my life. I started out when I got out of college—hell, I'm going to throw my speech away. (Laughter) I got out of college and I worked for labor. That was the first place I ever got on the labor group was—that's when my Dad was accused of having us morons—when I got on that labor group. I was appointed by the Governor to be on the—Associated Contractors at that time had quite a wrestle with labor. I think we were getting a couple of bucks a day and board, or 40 cents an hour. Those were the wages in those days. I thought that was pretty rough to live in over the winter. We had transient help, you might say. We fire them in the fall and hire them in the spring, and that was the common practice. So I thought, well, we should have just a little more justice in our dealings with labor. We should give them a fair enough wage so that they could live through the winter without having to borrow money from the boss to start the spring. By the time you got the boss paid back, well, he was pretty near where he was before—fall was in there and he didn't have any money again. So we did pass labor laws. We got the first 40 cents an hour law, I think, in the State of Montana—or the State of Minnesota at that time, which was around, oh, I don't know probably 1926 or '25, something in there. Later on, I got away from there and got out of the area. But 1935, of course, labor unions got started, and they didn't have any help. They were progressing very fairly and I have no objection. I worked with them, we got along fine with them. But all at once we come up here to where their wage—their asking was faster than their production. They asked for a wage increase rather—or whether or not they got any extra production or not, even with the increased production of machinery, the efficiency of machinery. They didn't care about that, and you could see what was happening then. They did not care about labor. Somewhere along the line—well, it had something to do—there's a lot of pretty rough people got into the labor movement. I don't say they're all in there now, but there was a lot of labor organizations that were fought by the big shots when the CIO and the AF of L merged. And some of these unions could not get into this merger, mainly because they were riddled with Communists, and there were a lot of pretty big unions that had to rid themselves of Communists. And, you know, they went so far and they got so strong later on, and the big shots in there had forgotten about labor. I'm sure of that, because these prices, after they had gone past the productivity angle to where they related their wage increases with the increases in production, that's when our trouble started. You have to pass the cost on to somebody. Whenever you have raised the costs, the boss doesn't take that raise. If he does, he goes broke. So contractors like myself could care less about these wage increases. We're not hurt. You'd think I was arguing like a lot of these letters say that we're getting from these people. I got a lot of them. They're set—and you know, it's just like the school teacher tells you—"You write a letter to Aunt Lucy; she's got a lot of money and she isn't feeling so good; and you'd better all write her a letter tomorrow." Well, you're getting them. They're dictated. They're regimented. They come 20-15, 20 in a pack from different towns, sort of. I can pretty near trace the way the business agent was traveling. (Laughter) Well, anyway, after we got into this mess, that's when I became worried. I really thought that something should be done about this right-to-work law, and it's been brought into this state several times and tried to be passed here in the Legislature. People have started to bring it up. I don't think it's ever got out of committee. They had an initiative here a short time ago and—well, 1958, I think it was—in which they went around and made a concerted effort to get an initiative, because they could feel that the Legislature was never going to get it because of this clout. Believe me, these union bosses have got to have this clout. They're not interested in this labor. I was going to show you where labor is hurt. We could move five or six times the amount of dirt in our business or lay twice as much oil or twice as much gravel as we ever used to, with half the labor that we used to, because they forced us to do it. And price doesn't mean anything. They try to tell you that we're trying to bring the price down, that we're going to take—make a lot of money. I've got a letter here—"Stupid bugger, you," I mean, "what are you trying to do? You're trying to lower the wages? You're trying to make a slave state out of this state?" Well, nothing could be further from the truth. When we bid on work, we use a prevailing wage. Nearly every building going up today, nearly every construction job of any size whatsoever has got some federal money in it someplace, and as soon as that federal money enters that picture, you pay that prevailing wage. And that prevailing wage is set fairly close to the union standards, whatever they are, and so the fact that they come out here and tell you you're trying to make a slave state out of this, that's for the birds. It just isn't. There's no such thing. We pay the prevailing wage. We do, however, have the opportunity of paying a lower wage if that right-to-work law is here, and that is where an increase in the use of labor will come in. That's why a lot of these states prosper that have got the right-to-work law, because on some of this other stuff—If I want to make a deal here with Blend, there, or Torrey, there, or somebody to go out and build him something, I can go out and build it. I can go out and build something for a fellow, and instead of having to use these union restrictions, this featherbedding stuff doesn't apply. That only applies when you have a contract that goes out on this work where your union restrictions, your compulsory union, is in effect. But in a Right-to-Work law, you could have the right to go out and go to work and work, and if they didn't like it, they could take the chance that maybe you'll quit that union, or you may go nonunion. So they tried to make a little more stable laws. I can go out and make a deal with you fellows, and I can build your feedlot or whatever you might want, or your driveway, and instead of having a roller operator there for 2 hours and having to pay him until noon, I can take him and put him on a shovel or on the truck or something else, without having to pay him sitting, and I can't use him. All these featherbedding deals, they hurt. And you know who they hurt? The laboring man. Hell, you just go out and find something bigger and better to do the job and replace two or three of those fellows so that you can avoid having all these fellows around and having to worry about what they're going to do next. You get a few men and do four, five times as much work, and 10 or 12 fellows sit on the side. It's just that simple. I maintain, somewhere along the line, and I think probably it was in a Romney hearing, that it's much better—and think of this now, fellows, think of it. It's just a lot better if we had 10 men getting $4 an hour, we'll say, than 4 men getting $10 an hour. That just makes sense. Those $4-an-hour men will be getting quite a bit more than our minimum wage law is today, and are the labor people very interested in this low class of labor? Hell, no; there's no money in that. They just aren't. They aren't going out where it's hard to organize, and they aren't interested in labor as a whole. They're interested in dues. If the dues don't come in fast enough to more than pay for their organizing, they aren't interested.

They're interested in dues, and I'm telling you that's why they want compulsory unionism, is dues. They're driving men out—time after time, driving them out of work, and they could care less. You don't pay our dues, you don't work. They're glad to sign up another man that's got money in his pocket that'll take out a card, and I can prove it. Well, anyway, I'm certainly not antiunion, like I've been accused of out of these letters. I'm for the—I'm not antilabor, I mean. I'm certainly anti-union-boss. Now, I got off my subject, I guess, or off my speech.

**CHAIRMAN GRAYBILL:** Mr. Studer, will you do what you can to complete?

**DELEGATE STUDER:** I'm going to finish right now.

**CHAIRMAN GRAYBILL:** That's good.

**DELEGATE STUDER:** I want to bring in this fact about welfare. You know, the welfare people have a bill of rights. We were listening to their stuff, and they have a bill. You have a right to welfare. Now, that's about the most ridiculous thing I've ever heard. Not that I'm against welfare. If you're poor and you've had a lot of bad luck, I say that you should get welfare, but you don't have a right as it's—as I'm applying it. This right was given to us to work, and they're taking it away from us. Now, how ridiculous that sounds, when they bring up the fact that you have a bill of rights for welfare—which they have, a printed bill of rights for welfare—and we just go along here and can't even go to work so that we can get off of welfare. How ridiculous that is. You've got a right to get on welfare, but you haven't got a right to get on work to get off welfare. What kind of a corner are we getting into? In closing, I have a 60-second editorial here from—well, I'm not going to read it. Labor's very existence is at stake. It is as sick as our economy is sick. Why not give it the help it needs? My bill of rights for labor has worked in 19 states as the medicine that has worked. It will work here. Why not give it a try? Does the doctor with the medicine that will cure a patient withhold it from him because he objects to its taste? The real issue here is the right that a working man has that he has unjustly lost. I'll not belabor this, but it is the only right that we've debated here that really affects us all in a very earthy, practical and easy-to-see manner. It hits our lives daily. It is the right to work and to eat and to live. It's ironical, isn't it, that we've had a large delegation here before our committee, testifying very emotionally about their right—and this right that I just talked about, this right to welfare—and we don't even have this right to work to get off of it. There's not one of us here who can, in good conscience, vote against the bill of rights for labor, if you know it should be done. Even though you've—honestly want to honor a commitment that asks you to do differently. That is why we must, should, or can with honor place this measure on the ballot so that can be voted on at once and for always by we, the people. By giving the people this alternative on the ballot—and that's what I'm going to talk about now—you have helped the Constitution to pass and you can rest assured that you voted for the best interests of the thousands who must live with this Constitution in the years to come. Let's give the real working man back his rights to work that is his, and that can be again. Now, this alternative is a very important deal. You've all heard it. You know it. We've tried to keep it off, we've tried to put it on; but this is one that says right in my bill that it's an alternate. It's an alternative that will be put on the ballot; you shall either vote for it, or you shall vote against it. I hope it's on there. I didn't remember—okay, it's on there—and it's not to be voted into the Constitution. I did not want it in this Constitution. That sounds funny, but I certainly did not want it in the Constitution. And the first time we met to talk about it, I brought it up, and that's—it had to be put in as a proposal; and when I put it in in the committee, it was—the alternative was put in, and that alternative gives people the right to vote on this important issue. It's been a very, very controversial issue in the state, and it will bring out a lot of people to vote. And believe me, all the people that will come out to vote for this thing are certainly going to put an "X" on top to go for the Constitution. They might vote against it or they might vote for it, but they're going to vote on—the ones that want the right to work in, they're certainly going to vote for the Constitution. And as has been shown by labor—and this is very important—in the ballot that they took on whether they wanted to stabilize or to go on phase two, and labor leaders all said "No, we won't go along with you. We're going to have to have our own way here. We're not going to go along." They took a ballot of labor, and 63 percent of labor voted that they would go along with this wage stabilization as against their union leaders. That goes to show you how they can vote when they've got a ballot that they don't have to put their names on. Now, if that is put on and even half of labor comes out and even wants to vote against this right-to-work law—even if all of those people voted against the Constitution, it wouldn't hurt it. Half of them, you see—because half of them will vote for it. Half of the labor leaders. There's people right in here, labor union people working right in here, that have told me that they would be glad to speak for me if they could just do it and not lose their jobs tomorrow morning. Now, I want you to know that this is a serious proposition, this alternative, and that is the key to the whole thing. If you're not willing to put it on the ballot as an alternative, you're voting against the will of the people and there's going to be a lot of people against it. I don't say it's threatening the Constitution's passing in any way, but I'll say we could help the Constitution in passing by bringing out this big vote for this bill and for—and they would certainly vote for the Constitution. There was a time when a man once said: "Is life so dear or peace so sweet so as to be purchased at the price of chains and slavery?" It may be, delegates, that we have become unworthy of such a heritage. I'll now close with this thought: that there are no extraordinary men, there are only ordinary men that do extraordinary things. Thank you.

**CHAIRMAN GRAYBILL:** Very well, Mr. Studer is correct that his motion on page 36 does include the idea that is to be submitted as a separate issue to the people. That issue is now open for debate. Mr. Lorello, you did have a motion that you want to make. Do you want to make your motion now?

**DELEGATE LORELLO:** Mr. Chairman, I do. I read this section and it reads "employment rights". I don't believe it's—here comes the dodge, Ralph—I don't believe it's a constitutional item, and this is what we're going to be telling people if we vote on this thing. I read just the section that gives the employment rights part, and I don't think that we can vote on both issues at once. We don't know whether this is going to go on the ballot or not. I'd like to discuss the thing or have the body discuss it and get a vote on it and then, if it has merit, perhaps be put on as a separate item. But I don't think we can vote both issues at once.

**CHAIRMAN GRAYBILL:** Are you going to make the motion?

**DELEGATE LORELLO:** Is that correct? Yes, you have my motion there.

**CHAIRMAN GRAYBILL:** Yes. Mr. Lorello's motion is he moves to delete Section 36—or Section 5 on page 36. So his motion to delete will be allowed, and we'll debate that, and it's the same thing either way. And you may debate either issue. Mr. Lorello.

**DELEGATE LORELLO:** Mr. Chairman, exactly what I said before—I don't believe that this is a constitutional issue. We've talked about this all day. I'd like to have some other talk on it. Thank you.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. Mr. Lorello and I had the same thought on this. We, this morning, voted down a right to organization and collective bargaining. I think that we should be consistent and vote down this employment right. I've had some experience with employment rights back in the '30's. I joined an organization, and I was working for William Randolph Hearst, a bleeding heart for the rights of labor. And I saw some heads busted and a lot of people gassed so that the scabs could have their employment rights. They were peacefully picketing. I don't think this thing is concerned with employment rights, but the right to break unions and lower wages. I, along with Mr. Lorello, would like to see this thing gotten rid of. Let's be consistent. If we can't have bargaining rights, let's not put in employment rights.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, I'm sure going to catch it now. You know, when I came up here, I didn't think anything about there'd be a right to work or anything come up. I came up here to see what I could do to help write a better fundamental law for the State of Montana. Since I have come here, of course, I have learned a good deal. As Mr. Studer said, he certainly has been very short in knowledge of many of these things, and I have, too. And I suppose I am in—as far as labor goes. Now, when I was elected in November by the people of District 6, I know there was a good many union people that voted for me. I suppose that some of those, perhaps, after I speak here, may wish they had not have voted for me. However, I do feel that the wives of many of these union men are probably pretty glad that they did vote for me about now, because I'm sure that they would rather have paychecks coming in than some kind of a big promise of something that they're going to have after they strike 6 or 8 months and it's questionable whether they will get it or not. Now, along these lines of whether I speak for this or against it, Delegate Wilson and I were instructed to bring up another subject here. You could call it a right to work or whatever you want to. Many people in our district didn't think the legal profession was treating them quite as they should, so we brought up a proposal. We discussed it very thoroughly here, and I think many of the legal profession realize that these things are going on. And I'm sure that they are going to do something about this on their own accord, and that's the way it should be. I don't think we ever hoped to put any position in the Constitution that would force this, but we did get it aired. I think this is one of the things that we should talk about this—let's open it up and look at it and see what Mr. Studer has here. Now, quoting Delegate McKeon here the other day—we're talking about the death penalty. He said it was 14 states had abolished it. This meant that it should be abolished. Well, there's 19 states have the right-to-work laws, so by that same measurement, what's the matter with right-to-work laws? Good or bad, 19 states have it. Now here's something to think about when we're considering this whole thing. Let's just look out here in the parking lot. How many foreign cars do you see? How many delegates here drive them? Why? You know why. Because they're a good car and they're cheaper. They're building them somewhere else. What about your television sets, your tape decks, your radios? Why? You know why. Cameras? Are there any being made in the United States any more? I think not. They're all farmed out—some foreign country. What about our timber products? Ship them to Japan, make plywood, bring it back, sell it on our market. What happens to the laboring man when this happens? He isn't making that plywood. How about that? What about the iron ore? Shipped to Japan; shipped to West Germany; prefabricated; comes back and we buy it. Is the laboring man of the United States doing any good with that? Why, certainly not. What about the pipeline that's going to be laid from the north slope to Valdez some of these days, when they get the thing settled to where they won't destroy the ecology? That pipe was all made in Japan; it's laying up there, millions and millions of dollars worth of it. What about the loading platform out on Cook Inlet, a hundred miles from Anchorage? I've seen it. I've landed on it with a helicopter. It's the only way you can get there. They load these oceangoing vessels with oil out there. They can—they have 60 feet of water at the shallowest tide. That whole thing was built in Japan, was towed to Cook Inlet by tugboats from Japan. Why? Why didn't they build it in the United States? You know why. I'm like Mr. Studer here; we've got to move to another page. What about the SST, the supersonic transport? Where is it being built? It's being built in Japan; they bought the plans. We couldn't afford to build it here; it cost too much. Go into any store downtown, look at the labels on all these goods; look where they were made. Why were they made there? You know why they were made there. What about the Montana wheat? All piled up in Montana because it can't be shipped to where we battled and battled to get markets. Our Wheat Commission worked. They took labor leaders over there, showed them the markets they had. Look what's happened to it. They were very sympathetic. They come right back and called another dock strike. That's how sympathetic they were. Now, I don't think that all this is caused because the price of labor is too high. Certainly not. As Mr. Studer says, it isn't the price you pay, it's the production you get and it's the work rules. They won't let them work. They won't let them produce. Now, somebody is going to get up here and—probably and say, "Well, yes, but the American worker produces so much more per hour." Well, he does not produce any more per hour. The figures show that the Japanese worker will produce a ton of steel for a little over 5-hours man—5 hours—man-hours. What's the United States steel worker's record? Seven plus hours. How come so many American ships are sailing under foreign flags? On account of the work rules they have to abide by. Now, this isn't providing any work. Now, yesterday we had a great big discussion here on the welfare rights of people—that they were entitled to this and entitled to the other. We had a chart here—the statistics of the counties that—how many they had. Lyle here has worked with them; he knows this. Isn't it a little bit odd that these same counties are where they have the closed-shop unions, the very same ones now have the big welfare problems? Mr. Monroe stated right here many of these people had to be on welfare only because they couldn't get a job. In some cases the union wouldn't let them work. Well, how about it? These are just some of the things. Now, Delegate Pete over here—my good friend, Delegate George, too—they want to delete this. Let's not talk about it any more. Well, I was down to my good friend Delegate Harper's church Sunday, and he told a little story, and I'm going to tell it at this time. The Arab was sitting in his tent. It was dark and he lighted a candle, and he reached over and he's got this bag of dates, and he sat down and he was going to eat. He took out the first date and he opened it by the light of the candle, and it had a worm in it. He threw it aside. He reached back, he got another date and he opened it, and it had a worm in it, and he threw it aside. He reached in and he got another one, and he opened it by the light of the candle, and it had a worm in it, and he threw it aside. Do you know what he did? He blew out the candle and he ate the fourth date. Now, I submit to you that that's what this amendment—my good friend, Pete, over here is suggesting—is we just blow out the candle and continue to eat the dates. Just one more little story here. Do you know what the people in our good sister State of North Dakota are doing, where they have the right-to-work law—what they're doing while we Montanans are telling North Dakota stories? They're building highways. And if you don't believe it, just go down there and look at the roads you have to drive on. I thank you, Mr. Chairman, and I certainly will support Mr. Studer's position.

**CHAIRMAN GRAYBILL:** Very well. The Chair wishes to announce that Rule 28 provides that the rules of the Convention shall be observed in the Committee of the Whole as—so far as they may be applicable thereto. Rule 17 provides "No delegate shall speak longer than 10 minutes at any one time."Rule 17 goes on to say: "This restriction imposed by this rule shall not be applicable to Chairmen or Vice-chairmen of commission when they're presenting a report of their committee to the Committee of the Whole. The same exception from this requirement shall be applicable in the case of the chief spokesman for a minority report." Now, the Chair is not certain that he has always cut people off after 10 minutes, but I know that—and I know that most of the long speeches have been by majority leaders or minority leaders presenting reports, which is fully within the rule. But the Chair wishes to announce now that from now on out, the Chair is going to enforce the 10-minute rule, and if it gets too bad, we'll enforce a lot more strict one.

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President [Chairman]. I rise to support Mr. Lorello's motion to delete this, and I would like to answer a few of the things—points that have been put forth here. I'd like to say, first of all, that I think that Mr. Studer is an entirely engaging man and I think he's utterly sincere in his feeling about this right to work; that he thinks this will solve a lot of things. And presumably he also believes that he is a friend of the workingman. I'd like to say that I have worked for both union contractors and nonunion contractors; and when I was working for the union contractors, I, from my own point of view, I always received a better deal. I was paid better. If I worked overtime, I got paid for that overtime. It was not so with the nonunion. I attended the Romney hearings here in this room, and I listened to the parade of witnesses that came up here to this rostrum. There wasn't a single laboring man in that group—up there pleading for the rights of the workingman. It was all contractors—pleading for the rights of the workingman. And I think that's a little strange. And when I worked for these nonunion contractors—and I have been forced to do things if I wanted to keep my job, such as working overtime at straight pay, or any of the other things that I found perfectly disagreeable—I never once, in all that time I ever worked for nonunion contractors, ever had another contractor come along and say, "Chet, your rights are being violated and I'm going to do something about it." It's always only on this right-to-work provision that they say, "I've got to protect this poor working man." Now, so far as this business of what happens within the union itself on the voting, Mr. Studer makes the point that if 51 percent vote to have a union, the other 49 percent are forced into that for life. Not so. They can have another election any time that you want to get a certain number of signers on a petition, or wait for the next time to come around, and if they can get 51 or 55 or 60 percent to vote out that union, it can be voted out. There's nothing in that for life. Now, I don't know where some of these facts and figures come from that they were quoting how great it was in these right-to-work states. They always go to percentages when they want to sometimes kid us. Any time you're a workingman, though, you're interested in what your hourly pay rate is. That's where the real important thing comes in. And looking at these right-to-work states; for instance, Wyoming ranks 25th. The average pay down there is $3.36 an hour. In North Dakota it's $2.93 an hour, which ranks 37th. And Montana is paying $3.70 an hour, and it ranks 11th. There's only one nonright—right-to-work state, Iowa, that ranks along with Montana. And there's only one right-to-work state that ranks above it, and that's Nevada. Now, there's a lot of—a lot of people always say about unions that certain things go wrong within unions, and that's true; but I think that could be said of almost any organization you want to take a look at. Something certainly went wrong with the Penn Central Railraod. They had to reorganize that thing completely. Something certainly went wrong with the Lockheed Aircraft Corporation, because we had to put up $450 million of government money to keep that thing going, or as a guarantee. So it isn't just unions that have their problems. And I don't know, I guess I resent a little bit this business of calling union leaders goons and avaricious people and dirty and all these things, because there's a number of labor leaders in this state that are my friends. The head of the AFL-CIO, Jim Murry, is from my hometown, Laurel. And while Jim isn't the greatest man in the world, I suppose, neither am I; and neither are any of the rest of us in here. He makes his mistakes, I make mine; but I certainly would wait a long time before I called him a goon or avaricious or any of those things. I find him a good man who works hard for the AFL-CIO, the labor movement of Montana; who is utterly dedicated to that and works 18 hours a day for the laboring people of this state. And I find this true of most of the laboring people that I know in Billings. They have a tough job. The head of the waitresses' unions in these different towns—I know some of them, and they are utterly dedicated. It's difficult, and I don't find them those kind of people the way they've been described. Now, insofar as this business of saying that because we have unions that that's why there's lots of Volkswagens in this country, and Toyotas and all the other different products that come in; it's true. These things come in at a cheaper rate because we've let down the barriers on our tariffs, and they do. They don't have well-organized unions in those countries, so they can sell it cheaper over here. But I really don't think that this is a very good argument for the ranchers and farmers in the State of Montana to be used—use against laboring people. How about if we start bringing in Argentine beef? You know, we can bring that in awfully cheap, too. We can bring it in by the ton, and you could drive every Montana cattleman out of business. Let's start bringing in New Zealand wool—take the tariffs off of that. You'll bring every Montana sheepman to his knees; they're out of business. Why is that? Because we're so inefficient? I don't think so. They can do it cheaper in those countries. Now, on the matter of Japan and its steel. That's quite true. You know why? Because Japan has the most modern steelmaking processes in the world, and you know who built them? We did. With our money. That's why they can produce more cheaply than we can—at least one of the reasons. So, again, I don't think that's any argument. I don't believe this belongs in the Constitution; I don't believe it belongs as a side issue on the ballot; and I support Mr. Lorello.

**CHAIRMAN GRAYBILL:** Very well. The Chair wants to apprise this body of the situation we are in. And we are going to continue to debate this; but, ladies and gentlemen, there's only a few of you debating and there are a lot of you listening. Now, the Chair has before it two more minority reports to discuss on this particular issue. One of them has 11 amendments to it on my desk. In addition to that, there are two—there are three proposals for new sections. So there are fourteen matters besides the two reports on my desk on Public Health, which we should finish this afternoon. In addition to that, the Bill of Rights Style and Drafting is up before us today; and in addition to that, Judiciary, Natural Resources, and Revenue and Finance are ready for final approval on Order of Business Number 5. Now, I've been asking among you, and I've found out that some of you would rather work through till at least 7 o'clock than have an evening session. But we may not be able to get it done by 7 o'clock, or even part of it done. So you go right ahead and talk. But I want you to know that if we don't finish a good deal of this work today, Style and Drafting—or, I mean, Rules will bring in a rule for a very stringent restriction on debate tomorrow. I don't mind debating an issue, but when an issue has been debated and the sense of this body is clearly determined. I think the rest of you should then be brief and should let the body vote. It's quite obvious that we're—that some of the issues we're debating that end up 90 to 4 and 95 to 1 do not need an hour and a half of debate. Who wants to be next?

Mr. Wilson.

**DELEGATE WILSON:** Thank you, Mr. President [Chairman], for telling me how long I should talk. I don't propose to talk—

**CHAIRMAN GRAYBILL:** Mr. Wilson, I haven't told you how long to talk, and I want everybody to understand that. The Chair wants to be ruthlessly fair here. But I think there are 99 other people besides the man speaking that have had so far the patience to listen, and I don't want their patience to wear out, nor mine. You may speak as long as you want up to 10 minutes under the rules, Mr. Wilson.

**DELEGATE WILSON:** Thank you, Mr. President [Chairman]. I don't think the issue here is against labor unions. I'm not against labor unions, and I think they should stand the light of day. I think placing the issue on the ballot just gives the people the right to exercise their option, and if they want to go a hundred percent in favor of retaining unionism and being against the right-to-work—the law, then I think this would clear the air. Every time that this has ever been brought up to any prospective legislator or politician, he shies away from it. It's taboo. So by putting it on the ballot, it just gives the people the right to exercise their opinion. Do we want it, or do we not want it? And if I were the labor people and the labor union people, I think I would welcome this, because then they can say, "here's the merits", and they can go out and tell the people why they should have this right to work or not have it—not have the right to work. Now, I belong to several cattle associations—the Montana Cattle Stockgrowers' Association, the American National Cattlemen's Association—and we think that all the cattle producers and livestock producers in the state, in the United States, benefit from these organizations. But should we compel every livestock producer to belong to these associations? Should we say to every person that—who raises cattle and livestock in the State of Montana that you must belong to the Montana Stockgrowers' Association? I suppose we'd like to do that, but should we do it? Should we go out across the United States and say every livestock producer must belong to the American National Cattlemen's Association or the American National Woolgrowers' Association? I don't think we want to do that. We're proud of our associations, and we're proud of the independence of it. And I think the people should be proud to vote whether they want to belong to a union or not, and I think the unions should be proud to have them exercise that option. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President [Chairman], fellow delegates. Mr. Studer's and Mr. Wilson's remarks are very well-founded. Mr. Studer's remarks especially are not a laughing matter. I think they're a very serious thing at this time, and a serious situation. Like Mr. Wilson said, the people should have a right to vote on this on the ballot. I'm not against unions. I've been a union man in Butte as a young man, and during the second World War at Great Falls I worked on Gore Hill for 5 months as a carpenter, and I did go to my union meetings. I was an employer for many years, having employed five to six clerks in my stores—two stores in Butte. I belonged to the employers' association during these years and sat in negotiations with union leaders. I insisted that my employees go, too, and take an active part in their union. I believe in unions. They have been very important in the past, helping us to build the greatest economy the world has ever seen. But I believe they must be cleaned up at the top. Labor unions have been—become too powerful. I do not blame this on the labor union leaders, because they're only human. Give some people a little power and they'll take all they can get. I blame it on the union members themselves, who do not take an active part in their unions. Good, hardworking men really need no union; they would get along fine. But they have allowed the powerful labor bosses to become unreasonable in their demands against the golden goose, the small and large employers throughout this country, and especially this state. We have buried a lot of businesses here through labor unions, and the ones that are unreasonable. Any time the employer has to increase salaries and wages unreasonably, the price of that commodity necessarily goes up. I agree with Studer on the facts he has submitted to us. Labor unions must clean up their own house, and they would—there would be no question about people wanting to join for the benefits a larger group can negotiate and get for them. Get labor union leaders—let labor union leaders lose their salaries, and a lot of the union employees—as do the union employees during a strike, and the strikes would not be prolonged as we have seen them. I saw Butte go down from a very progressive, fine city to a shambles. Prolonged labor union strikes have put many businesses out of business. I, myself, sold—or, I should say, gave away—one of my retail stores just to get out of Butte because of these strikes every year. A clerks' union strike cost me $13,000 in 3 weeks and forced me to close it out. They were unfair to me because I was a hometown boy making good. Give the people a chance to clean up the unions; they will be stronger. And encourage people to want to be a member. Union members themselves can do this, but they have been apathetic. Why can't Montana induce more industry into our state? We cannot compete. And I would hope we can eventually get labor and employers working together, not selfishly, but for the benefit of our entire economy. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman and fellow delegates. I didn't intend to speak on this, because I really didn't think there was really that much necessary—it would be that necessary, actually, for this much floor debate. But I would like to take issue with Mr. Jacobsen in stating that Butte is down to shambles. I feel it's far from that, but I would just like to make that point clear. But I would also like to say that the workingman has come a long way, and if this Convention feels in its wisdom that it can go ahead and pass a bill which the Montana Chamber of Commerce feels very highly that they can write about and—in letters to the editors in the *Montana Standard*, as they spoke today, that this is what they want. Well, I think that everyone can realize exactly what the Montana Chamber of Commerce wants. So I hope that this is turned down quite soundly. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. We, today, have decided that the right to collective bargaining did not belong in the Constitution; we decided also that we didn't—the merit system did not belong in the Constitution; and I don't think this belongs in the Constitution. And I'm afraid if this was put on the ballot and this would be—this Constitutional Convention—it's question of constitution—because we would be submitting it. And this is why I opposed it in the committee. I'm still opposed to it. I think this has no place. If they want to go to the next session of the Legislature, which will start next year in January. I—yes, it will be in January, because the new law will not be in effect at that time—they have plenty of time then to go out and do it. And I certainly hope that this Convention will continue to leave this kind of stuff out of the Constitution. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman, I've been told at home by a person that if I ever wanted to run for political office again, I'd better not vote for this. But not being very politically inclined and not being much of a politician anyway, it didn't have too much effect on me. Over the years, this has been bantered back and forth so much, and personally I'm for putting it out to the Great Legislature, and that's the people. There is no way that I would vote to include this to go in the Constitution to be put out with the rest of it, but I would like to see it handled by the people and decided by the people. And we either have it or we don't have it, and it's done and, hopefully, buried one way or the other then for quite awhile. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I'll speak very briefly for the minority—or for the majority. I wrote the majority comments which you will find on page 41, and I won't repeat them here. I think they are reasoned. I would hope the Convention will vote this proposal down on its merits, which I think are very small. I would like to say that I am a lifelong student of labor economics and labor relations. I have read almost all, I think, of the literature on this subject. All of the arguments that have been brought up here today of an economic nature in support of a right-to-work law can be fully answered and have been fully answered in the literature, and I'm not going to take the time to repeat that here. I would like to say one thing. I echo Mr. Blaylock—I—comments on his feeling of insult to his friends. They are also my friends. I know a great many labor leaders in this state. They are not the nasty characters that they have been pictured here. They are decent men, and they work hard for their people. And I'd particularly like to respond to one comment which Mr. Studer made, which I think is totally baseless, and that is the statement that labor unions don't try to help workers unless they're sure of being paid for in dues. I know from my own personal experience and observation of countless instances in which unions have attempted to organize workers, and are today attempting to organize workers, where they have very little or no hope that they will ever be repaid in dues for their efforts; and this is simply a false charge. I hope you will vote this down.

**CHAIRMAN GRAYBILL:** Mr. Artz.

**DELEGATE ARTZ:** Mr. Chairman, the Montana cattlemen were very adamant that a special levy on livestock be provided for in the Constitution. They did not want it as a side issue on the ballot. We provided for that with a special levy under the Revenue and Finance report. Now, we are being asked to prohibit labor from providing for mandatory membership by contract. Equity and fairness demand that we give labor the same consideration that we gave the cattlemen. I am opposed to Delegate Studer's minority report. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is—

Mr. Studer, do you want to close?

**DELEGATE STUDER:** (Inaudible)—vote on this amendment. Mr. President [Chairman], I—

**CHAIRMAN GRAYBILL:** Let's see, I guess it isn't a matter of closing; it's—Mr. Lorello is up.

**DELEGATE STUDER:** Yes, I wanted to talk on the subject, though, before it goes to that, or I might be—

**CHAIRMAN GRAYBILL:** All right, I'll let you talk—I hope briefly.

**DELEGATE STUDER:** Yes, very briefly. Mr. Blaylock showed that the figures on the right-to-work laws in Montana—I just wanted to show why that is. There's—Montana's compulsory unionism, and they have most of their labor working under that basis and they have a higher rate—I was going to show Mr. Blend, some of these people—I just picked them out as a person—that I could do work for other people and I wouldn't have all these other clauses in there. I can go out and get a crew together and do work once in awhile without paying six or seven or eight or ten dollars an hour. I can do it on a four, five dollar an hour basis. I don't think we've even hurt labor doing it, but it does increase the amount of money going to labor; but it necessarily would bring the cost per hour down a little bit. Calling union men avaricious people I don't think was too bad. I really mean the fact that they have been that way in this featherbedding deal that I passed around here the other day. It actually shows it. I mean, the fact that you demand to pay a man, and for sitting there watching a fellow welder work all day just so you can go ahead and do some plumbing a half an hour afterwords isn't anything but asking for money for nothing. And if that isn't avaricious, I don't know what it is. It's asking for it maybe for the laboring man, but just the same the union bosses have got that in mind. They're certainly not looking for you to hire more people. That isn't the answer for that, because you raise the cost out of—way out of proportion. And naturally people are looking for the labor-saving devices to buy, and that's been proven. I didn't take that all in. I skipped it in—on account of brevity. And as far as shipping to Japan and back, who is getting hurt in the whole deal? The differences in the cost of labor—if we didn't have such a high labor scale, how could we afford to ship our stuff over there, manufacture it with their labor, ship it back here, distribute it, and market it again, and still make a profit when we could have just as well have done the whole thing in this country? The difference is in labor here as against there. We put their men to work; we haven't put ours to work. Ours are out. It's quite a serious thing. That's one of the causes of our terrific unemployment problem here today. And as far as Lorello's motion, it's exactly what I said. It's just a slippery method of evading the issue. Are we afraid to take this thing to the people? We're not talking about putting it in the Constitution, and I'm not talking about putting it in the Constitution. I'm talking about the people putting it into the Constitution. Why should we hide behind the thing? If you're afraid of that clout, that's exactly what I'm talking about—that you are afraid of this clout. You don't want to be up there on a roll call against them, and I claim it's just evading the issue because it's strictly—do we want to let the people vote on this, or do we not let the people vote on this? I think that we, the people, is what this thing was brought up about. Mrs. Speer's book, *"We, The People,"* was the first book we got when we got started here as delegates, and we were indoctrinated on the thought that we should be here representing the people. How are we going to do it on certain issues that are special issues, and put them in the Constitution? And here's an issue that's controversial—they want to vote on it. I have a tentative ballot. I didn't try to hurt the Constitution by putting it in there, and you try to evade it by deleting it. That is slippery, and I claim it's damned cheap, and I think it's showing who you owe your allegiance to. I hope you can live with your conscience. I'm sure that I couldn't if I voted a slippery little measure like this out when you've got a chance to give something to the people—I don't think I could rest good. This thing is going on for years and years, and I'm sure if you in your own conscience think that this is a good measure, you should vote for it; and if you think that in all my presentation here I have failed completely and that the unions are a hundred percent right and they're a growing organization and they're very healthy and they're working for the laboring man, that is a good reason to vote for. But then I'd certainly let the people decide that, because between now and June 6th, there's going to be an awful lot of people brought out for and against this thing and I—like I say, I think they'll help the Constitution a lot. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Lorello's motion to delete Section 5 as proposed by Mr. Studer. A roll call vote has been demanded.

Mr. Romney, are you going to speak on it or not?

**DELEGATE ROMNEY:** I would like to, but I don't know.

**CHAIRMAN GRAYBILL:** You may speak.

**DELEGATE ROMNEY:** Mr. Chairman, I have never belonged to a labor union. I've operated a business for about 40 years. The fact that I didn't—that labor has improved its status during that period until now it has really a standing in the American community which it did not have many years ago when I first became an employer, has, I believe, aided the American economy immeasurably. The farmers are organized in numerous organizations like the Grange, the Farmers Union, national organizations, the Farm Bureau. The stockgrowers are organized, the doctors are organized, lawyers are organized—nearly every form of activity in the economy is organized; and labor is organized. When the birds go south or north in their migrations, they're organized. They normally go in large flocks, and the ones that don't go in flocks benefit by the flight patterns of the flocks. And I say that the people who are unorganized in the Montana and American labor movement are benefiting by the efforts and the sacrifices that are made by the labor movement. It's true that sometimes things go amiss, like when Mr. Hoffa and Mr. Beck carry on peccadillos and get into jail, but that happens in big business. It happens even among our friends. And that does not place a stigma upon the entire movement. I think that we would be very foolhardy if we embraced this so-called right-to-work issue, and I support Mr. Lorello's motion to delete.

**CHAIRMAN GRAYBILL:** Mr. Lorello.

**DELEGATE LORELLO:** May I close, Mr. Chairman?

**CHAIRMAN GRAYBILL:** You can close unless someone wants to stand and say that they want to speak. (No response) Very well, you may close, Mr. Lorello.

**DELEGATE LORELLO:** I'm an employer also, and I also work for industry. And I think that we could really get into a lot of debate about these things and find out the nasty little things that labor done to industry and that industry done to labor. Yesterday, Mr. Garlington was searching for eagles, and today, I think Mr. Studer was looking for some pigeons. I sincerely hope that you'll give the right to work the indecent burial that it so rightly deserves. And I guess we asked for a roll call. Thank you.

**CHAIRMAN GRAYBILL:** Very well, all in favor of Mr. Lorello's motion to delete Section 5, as proposed by Mr. Studer, vote Aye; and opposed, No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the vote, please.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Absent |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Drum | Nay |
| Driscoll | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |

| | |
|---|---|
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Absent |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 79 delegates voting Aye, 16 voting No.

**CHAIRMAN GRAYBILL:** 79 having voted Aye, 16 voted No, that section is dead. Mr. Kelleher, you have an amendment to the Labor Article. Do you want it read? It concerns compulsory arbitration. Will the clerk read it. Here it is, John.

**CLERK HANSON:** "Mr. Chairman. I move to amend the majority proposal of the Labor Article of the Public Health, Welfare, Labor and Industry Committee, page 8, line 13, by adding thereto the following new section: Section—"

**CHAIRMAN GRAYBILL:** It'll be Section 6.

**CLERK HANSON:** "—6. Section 6. The Legislature shall provide for a system of compulsory arbitration." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Kelleher has made a motion that we put in, as Section 6, the language: "The Legislature shall provide for a system of compulsory arbitration."

Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, I'll be brief. In the last half of the last century we saw the rise of big capitalism, and the first half of this century we saw the rise of big unionism. And big labor and big management have long ago decided in their arbitration—in their bargaining agreements that there's a big fat cat out there, there's no use putting the shaft to each other—there's a big fat cat out there, and that big fat cat is the public; and this proposal would protect the public. The unions would have the right to strike under this proposal, but the Legislature could set up such machinery—say a Montana Labor Relations Board—as they saw fit, that would allow them to strike for only a certain time and then they would have to submit to the jurisdiction of the agency. And whatever provisions or whatever arbitration decision the agency finally came up with would be enforceable in the courts, and this would mean an end to the long, costly strikes that we have known in the United States and in the State of Montana for such a long, lengthy time. Now, I know I'm known as a liberal; I've walked a picket line; but I think the day has come to take a different tack in the field of labor-management relationships, and that the long-drawn-out strike is simply a luxury that we can no longer afford in the United States, and particularly in the State of Montana. And, Mr. Chairman, I would like to have five seconds for a roll call vote on this.

**CHAIRMAN GRAYBILL:** You may have a roll call vote. Is there discussion?

Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman, may I speak? I'll be very brief. Two objections: one, I think this is very definitely statutory; secondly, on the merits, I think the compulsory arbitration deprives the union of perhaps its most potent and only right, that being the right to strike. And it's my feeling that it's tantamount to slavery, so I will oppose the motion.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I feel the same. This is statutory. I don't want this in the Constitution. If the Legislature in its wisdom wants to pass one, I'm certainly going to let them do it. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Kelleher's motion to put in a section—

Mr. Kelleher.

**DELEGATE KELLEHER:** May I close? This is not statutory. It is merely directive to the Legislature to set up such legislation.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Kelleher's proposal that we add a Section 6, the terms of which would be: "The Legislature shall provide for a system of compulsory arbitration." So many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |

| | |
|---|---|
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Absent |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Absent |
| Monroe | Absent |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 70 delegates voting Aye—7 delegates voting Aye; 80 voting No.

**CHAIRMAN GRAYBILL:** 80 having voted No and only 7 having voted Aye, the motion is defeated. Mr. Kelleher, you have another here that I'll style Section 7. Do you want it presented?

**DELEGATE KELLEHER:** Yes.

**CHAIRMAN GRAYBILL:** Very well, the clerk read proposed Section 7.

**CLERK HANSON:** "Section 7. Mr. Chairman. I move to amend the article on Labor of the Public Health, Welfare, Labor and Industry Committee Report, page 9, by adding a new section to read as follows: 'Section 7. No retail or wholesale business, except for those necessary services and amusement places exempted by law, may be open for business from such hour approximating sundown on Saturday until such approximating sunrise on Monday, as shall be provided by law.' Signed: Kelleher."

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman. The last one, Section 6, is for the future. Our state and the country's going to come forth—come to it in the future. Section 7, the one we're talking about now, is for now; and I'm real serious about this one. It would guarantee emancipation of our working people, of those in nonessential industries—like hospitals, police, fire departments, and so on—that they would be guaranteed at least one day a week with their families at home. And many of the clerks at Buttreys and Albertson's and the stores down in Billings have urged me to put in this proposal, and I have more written support for this than I do for the guns and the right to work together, many times over. Even this Convention has—allows us—as hard a taskmaster as you are, Mr. Chairman, you even, thus far anyway, have allowed us to go home on Sunday. The Legislature—

**CHAIRMAN GRAYBILL:** I'll make a note of that, Mr. Kelleher. (Laughter)

**DELEGATE KELLEHER:** The Legislature would decide what the exact hour would be. The Legislature could change it from the summertime to the wintertime. There's no set hour and there's no set business that would be closed or allowed to be open on the weekend. It is very common for this—this is very common in Europe—in Switzerland, in Germany, in France, in Holland. They just shut her down about 4 o'clock Saturday afternoon so people can have a weekend by themselves. You'll note that it is not a blue law—and I repeat, it is not a blue law—because, in addition to necessary services such as gasoline stations, hospitals, police departments, fire departments, and so on, and apothecaries—selected apothecaries—drug stores in an area that are allowed to stay open, places of amusement are allowed to stay open, such as ski lifts, movie theaters, and that sort of thing; and if you'd passed my other resolution—my other proposal, something else might have been allowed to be—stay open, but you—McNeil killed that. (Laughter) McNeil's against fun. (Laughter) In my own town of Billings there is a very large department store. The manager, around Christmastime, is required to keep it open on Sunday. He doesn't want it open on Sunday; his employees do not want it open on Sunday; but some vice-president back in Chicago, who's probably out playing golf on Sunday, has decided that his store in Billings, Montana, must be left open on Sunday. And the employees are told that if you want to work in this establishment, you must work on Sunday. And this, I say, is involuntary servitude. There is a large store in Bozeman where the management has his orders to tell his department heads that you will work on Sunday, or else. Now, this does not require you to go to listen to George Harper on Sunday, though I highly recommend that. It merely says that on Sunday you must not work in a retail or wholesale business as—that business as determined by the Legislature. This matter is not legislative, because it is the right of people to have at least this one day with their family. And it is a directive to the Legislature, and the Legislature is given very wide latitude as to what types of establishments will be closed on the weekend and which type of establishments will be allowed to stay open, and also the time that they are allowed to stay open. It would not affect motels and that sort—or hotels, or any type of necessary service or place of amusement. And I would like to have five seconds for a roll call. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** We'll have a roll call. Is there anybody on the other side of this?

Mr. Davis.

**DELEGATE DAVIS:** Mr. President [Chairman], I think that we should have something in on the other side of this, because this is a blue law. And although I am not a Seventh Day Adventist, this is a great infringement on the rights of—the religious thinking of people who do worship on a different day than Sunday. And I do suggest that it's probably a violation of Section 3 of the Bill of Rights, which provides all people are born free and have certain inalienable rights, which include the right of pursuing life's basic necessities. So I think this should be defeated. It's not the type of thing—it's an infringement on the rights of any Seventh Day Adventist who take their day off on Saturday, and if they wish to work on Sunday, they have that right.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Kelleher's motion that we have a Section 7.

Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I would like to amend this to put in Friday and including—Friday evening sundown till Monday morning.

**CHAIRMAN GRAYBILL:** Send it to the Chair in writing, Mrs. Bates. Is there any other discussion? Now, you'll have to hurry. Very well, you can close, Mr. Kelleher.

**DELEGATE KELLEHER:** I just wanted to say that I did consider the possibility that the Jewish Sabbath actually starts on Friday evening, and I would like to have that long weekend, but it would be asking too much. And I know the Seventh Day Adventists worship on Saturday, Sabbath, but if the Legislature wants to set it earlier in the afternoon, they could still have their time off for evening services. But I want to repeat, this is not—is not a religious blue law. It is to guarantee the workingman and the workingwoman one day a week that they can spend with their families.

**CHAIRMAN GRAYBILL:** Very well, the Chair will now have to put Mrs. Bates' amendment, which is to amend it to read from Friday sundown until Sunday—"the hours approximately sundown on Friday", on line 4, "to sunrise on Monday".

Mrs. Bates, you want to discuss that?

**DELEGATE BATES:** Yes, I would like to discuss it.

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE BATES:** This is what they do in Australia, and I've heard several people say maybe we should go to Australia. And they enjoy a long weekend there, and if we really want to do something about a weekend, let's make a long one. Thank you.

**CHAIRMAN GRAYBILL:** Do you want a roll call on that, Mrs. Bates?

**DELEGATE BATES:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well, the issue is whether Mrs. Bates' motion, which is to make 7—Section 7 read: "No retail or wholesale business, except for those necessary services and amusement places exempt by law, may be open for business from such hours approximating sundown on Friday until such approximating sunrise on Monday, as shall be provided by law." So many as are in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. Use the voting machines. So many as are in favor, vote Aye; so many as are opposed, vote No.

**DELEGATE KELLEHER:** Mr. Chairman, I asked earlier for a roll call.

**CHAIRMAN GRAYBILL:** We're not on your motion, Mr. Kelleher. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 7 having opted for Australia and 72 for America, the thing is defeated. (Laughter) Now we're back on Mr. Kelleher's motion.

Do you want to close, Mr. Kelleher?

**DELEGATE KELLEHER:** I—no, I didn't, Paul—I, like you, and I think most the lawyers here, probably work 6, 7, 8 days a week. You lay people may not believe that, but we do. In Spain they sleep from 1 to 3 hours—1 to 3 in the afternoon—and I think that if we had something like this, men of our age might live a little bit longer and might not have so many ulcers and might not have our coronaries so quickly. Thank you.

**CHAIRMAN GRAYBILL:** Very well, all in favor, vote Aye on the voting machines; and all opposed, vote No.

For what purpose do you rise, Mrs. Bates?

**DELEGATE BATES:** Mr. Chairman, I'd like to explain my vote.

**CHAIRMAN GRAYBILL:** Go ahead.

**DELEGATE BATES:** The kids have to be fed and the cows need to be milked. (Laughter)

**CHAIRMAN GRAYBILL:** Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot, please.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Absent |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Absent |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |

| | |
|---|---|
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 20 delegates voting Aye, 68 voting No.

**CHAIRMAN GRAYBILL:** 68 having voted No and 20 Aye, the motion is defeated. Are there other amendments to the Labor Article? (No response) Very well. Members of the body, the Chair would like to point out that my obvious displeasure at the length it takes to do this is caused by the fact that I think we are here on very serious business and we are dealing with an article which has some very important material in it and I'm perfectly willing it be debated. But I think you should realize that it costs us and the taxpayers something like eight or nine thousand dollars a day to sit here, and we are about to lose our schedule of finishing next week. The Chair feels this is very serious. Now, if you have serious amendments to make and serious arguments to make, I'm the first one that wants to give you that chance. But I don't think that a few of us should trifle with the rest of us with things which really haven't a chance, and I think we should exercise some discretion as to what we attempt to put into this Constitution as we get into these final days. And I don't think that we have been exercising that discretion, and I don't think we're going to finish this job unless you force me to be terribly harsh on you and put on—put in time limits and make you work hours which will make some of us ill. And I don't think that's fair, so I'm asking you to—you know, we have committees, the committees have thought, the committees have got their proposals. These are not minority proposals; these are delegate proposals, of which there are thousands of them if we want to start going through them. And I really think that those of you who have done these things ought to think carefully about it before you do it again, because you're really trifling with the patience of, obviously, 85 delegates who consistently vote against this sort of thing. Now, the Chair will entertain a motion to recess for 10 minutes, and the recess will be only 10 minutes.

Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I so move.

**CHAIRMAN GRAYBILL:** Very well, the motion is to recess for 10 minutes. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

(Committee in recess from 4:30 p.m. to 4:50 p.m.)

**CHAIRMAN GRAYBILL:** The committee will be in order. The Convention will be in order. Members of the committee, we're on the minority report, on page 16. Will the clerk please read the title and the first section of page 16.

**CLERK HANSON:** "Minority Report. Be it proposed by the Public Health, Welfare, Labor and Industry Committee that there be a new article on regulation of public utilities to read as follows: Article. Regulation of Public Utilities. Section 1, Public Utilities Commissioner. A Public Utilities Commissioner shall be appointed by the Governor and confirmed by the Legislature (Senate) after public hearings, for a term of 4 years, which shall coincide with the Governor's term of office. A vacancy shall be filled for the remainder of the unexpired term in the same manner. The Governor may at any time remove the Commissioner for any cause deemed by him sufficient, after such public hearings as may be provided by law." Mr. Chairman, Section 1.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1 of the minority proposal on regulation of public utilities of the Public Health, Welfare, Labor and Industry Committee, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, members of the Committee. I should perhaps open this discussion by observing that Mr. McCarvel and I do not hate the Montana Power Company, the Montana-Dakota Utilities Company, the Pacific Power and Light Company, nor Mountain Bell. As for the railroads, I am positively sympathetic to their problems. Not only do I not hate the Montana Power Company, I must even admit to a certain grudging admiration of its efficiency. After all, I am an economist, and economists are notorious for their reverence for efficiency. The efficiency to which I refer, though, is not primarily economic efficiency. In truth, I am not at all sure how efficient Montana Power is as an economic institution. One of the unfortunate aspects of regulated industries is that we never have any sure means of determining whether they are economically efficient. I am sure, however, that the company is an efficient political institution. Historically, the company usually has had its way, even though there are some signs its grip may be loosening. They will, of course, fight the new Constitution, and whether we adopt the proposals of Mr. McCarvel and myself will not influence that issue in the least. In fact, by adopting those proposals, we could go a long way toward neutralizing the company's opposition. The electorate would then expect it, recognize it as self-serving, and discount it appropriately. May we also observe that we do not think our proposal is in any respect a panacea. Quite the contrary. They represent merely a first step in a process of reform. However, in addition to the reforms included in the proposals, their adoption by the Convention would force the Legislature to reopen the whole subject of regulatory law and write a new law. Moreover, these reforms, together with the legislative reforms that would necessarily follow, should have a salutary effect on the Supreme Court's approach to regulatory law. Now, let me take a couple of minutes to state the economic philosophy underlying these proposals. Mr. McCarvel and I believe in a free market, competitive, private enterprise system. We believe in such a system because, to the extent that it is really free and competitive, it is the best economic system for the consumer. It is productive and technically efficient because it contains incentives to keep output high and costs low. It is fair to the consumer because it contains a built-in control system—namely, competition—that keeps prices and profits down and assures that the consumer gets what he wants when he wants it. On the other hand, we dislike socialism, because any kind of socialism fails in some degree to provide either the incentives or the controls to insure that the system serves the consumer. The worst kind of socialism is private socialism, otherwise known as private enterprise monopoly. The brand of socialism we most often think of is government enterprise monopoly, which is bad enough but at least has the virtue of being responsive to some degree to democratic political institutions. Private enterprise monopoly—private socialism—is intolerable unless government intervenes effectively to protect the consumer. We would be best served if we could avoid socialism of any kind, because it lacks the incentive for efficiency and the controls for equity that free, competitive, private enterprise provides. But sometimes—usually because of the technological requirements of some industries—free, competitive, private enterprise is impossible and we are stuck, like it or not, with some form of socialism. We can take our choice between private socialism and governmental socialism, but either way we have to find means of supplying the missing ingredients—incentives for efficiency and controls for fairness. Traditionally, we have elected in Montana to accept private socialism in the industries generally known as public utilities, and we try to supply the missing ingredients through a process called regulation. The evidence that we have not been successful is a matter of common knowledge. The proposal you have before you is an attempt to begin putting some effective control on Montana's socialist enterprises. Mr. Chairman, with that by way of introduction and with your indulgence, I would like to go over the entire proposal, beginning on page 18, briefly, before the committee considers each section separately, in order to give you an overview of the interrelation of the proposed sections.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE HELIKER:** The first section provides for the abolition of the existing elected Public Service Commission and the substitution therefor of a single Utility Commissioner to be appointed by the Governor for a definite term. The second section provides for the powers of the Commissioner, and its main point is that it eliminates the so-called fair value rule under which regulation has for—since about 1913 taken place in the State of Montana. The third section provides for a mandate to the Legislature to supply an adequate staff to the Commissioner and provides for the impartiality of that staff. The fourth section sets forth clearly the duty of the Commissioner to represent the customers of public utilities and the public. The fifth section requires that regulatory power be concentrated in the office of the Commissioner. Now, Mr. Chairman, I will revert to Section 1, which is under consideration.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE HELIKER:** Section 1 replaces the existing statutory three-man, elected Railroad and Public Service Commission, which goes back to 1907 and 1913, with a single appointed Commissioner. The proposed reform is modeled on the system used since 1932 in the State of Oregon with generally recognized success from the standpoint of both the regulated companies and the public. And I remind you of Mr. O'Scanlin, the current Public Utility Commissioner of Oregon's, appearance before this Convention, and I have had placed on your desks within the last day or so a copy of his speech for—to refresh your recollection. It is also influenced—that is, this recommendation of a single Commissioner—by the findings and recommendations of the President's Advisory Council on Executive Organization, otherwise known as the Ash Council, a copy of the pertinent chapter of which I have also had placed on our desks. It is entitled "A New Regulatory Framework Report on Selected Independent Regulatory Agencies". This was a commission appointed by President Nixon, and it reported—the report was released on February 11, 1971. The members of that council were Roy L. Ash, President of Litton Industries; George P. Baker, former Dean of Harvard University, who did not participate; John B. Connally, the present Secretary of the Treasury; Frederick R. Kappel, former Chairman of the Board of Directors of AT&T, who dissented; Richard M. Paget, President of Cresap, McCormick and Paget, Incorporated, a management consulting firm; and Walter N. Thayer, President of Whitney Communication Corporation. Now, this council studied federal regulatory agencies—seven of them—the Civil Aeronautics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission. The council recommended a number of things, but pertinent to the present discussion, it recommended restructuring and combining the seven agencies into five, four of which would be headed by a single commissioner. This single commissioner would be appointed by the President to serve at the pleasure of the President, which is, of course, different from the proposal before you, which provides for a definite term; provides for confirmation by the Senate. The recommendation of the council was based on the finding that single administrators would enable the agencies to attract and retain highly qualified personnel and increase accountability to both the President and the Congress and enhance the efficiency of administration. In most states, as in Montana, the multimember regulatory commissions, whether appointed or elected, have proved ineffective at best. This is generally recognized by students of the problem. I may say, parenthetically, that up until the time that I received my Ph.D. degree in Economics at the University of Michigan, one of my fields was the public control of industries. Since that time, since I have come to Montana, I've taught a course in public utilities only one quarter, in 1955; and since 1955 I have been inactive in the field. I do not hold myself forth as an expert in the details of regulatory law or economics, but one does not need, as I have previously stated, to be an expert in this field to recognize the need for reform in Montana. The attempt to insulate regulation from politics has resulted in freeing the regulators from accountability to the public whose interest they are charged with protecting, but it has not insulated them from overwhelming pressures of the powerful corporations whose rates and service they supposedly supervise. In fact, it is axiomatic among professional students of utility regulation that the regulators have long since become the regulated. Now, this is not peculiar to Montana. This is generally the story across the country with these state regulatory commissions, and the more they are insulated from politics in the sense in which Montana is insulated, the worse a job they tend to do. The minority of this committee is convinced, after hearing testimony from highly placed officials and counsel of almost all of the important regulated monopolies in Montana, and many, I might say, of the unimportant ones, that their customers would be as well off as they are now if regulation were to be abolished altogether. We are persuaded that the existing regulatory process is but an elaborate sham battle, a sort of Roman bread-and-circus game in which the monopolies get the bread and the consumer pays for the circus. The upshot of the whole sorry spectacle is that the corporations secure the imprimatur of the state for rates no higher than they would set entirely on their own initiative. In dreary near-unanimity, witnesses for the monopolies agreed that in the procedures, regulations, structure, method of selection, and the law under which the Montana commission came into existence way back in 1913 and operates, all is for the best in the best of possible worlds. They admit one exception to the rule. They agree it would be better if the taxpayers would ante up more money for a larger commission staff so that their rate applications could be approved with less delay. Incidentally, I have before me the report of the Montana Legislative Council's—the subcommittee which looked into this matter and reported in December 1970, and I find their experience coincided with ours. On page 8, they say: "All of the public utilities in the state were invited to attend a subcommittee meeting to provide the subcommittee with information which might be helpful in its study. The meeting was well attended. Many statements were offered and many questions were propounded. In general, the utility people were satisfied with the services of the commission and staff and did not feel that any legislation was required. The only adverse comments made were: one, failure of the commission to allow the increases requested—that's a strange one; two, delay in rendering a decision after a hearing; and three, that the commission had an excellent and qualified staff, but there is need for additional commission personnel to handle the workload." We heard the same story, except I don't recall that we heard any criticism of the commission for failure to approve their rate increases. The minority is convinced that the Montana ratepayer will never get fair treatment of the present multimember elected Commission, because it is literally impossible for the election process to attract and select more than an occasional qualified, competent and dedicated Commissioner. The electorate simply does not have the opportunity to acquaint itself with the qualifications of the Commission candidate running as one among a crowd of candidates for various and sundry state, city and county offices. The result is that not only does the average voter know little or nothing of the Commissioners' qualifications—he frequently votes on the basis of name association, as you well know—but also not 1 in 10,000 even know the Commissioners' names. The minority believes now is the time to put an end to this disgraceful charade. At the same time, the minority was persuaded by the testimony, and perhaps by other recent events, that it would be unwise not to give the Commissioner a substantial measure of independence of the Governor. In this respect, our proposal is also modeled on the Oregon experience, but we have added the requirement of legislative confirmation. We believe there is a clear movement toward greater accountability of regulatory agencies—particularly as shown by the Ash Commission's—Ash Council's report—accountability to the people through the chief executive and toward focusing attention and responsibility on one man. We believe Montana should be a leader in this movement. I may say, those of you who supported the principle in this Convention of a shorter ballot and of greater accountability through the chief executive, that this is an opportunity to further that principle and this is an area in which that principle needs to be furthered.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, having been on the committee on the majority side of this, I move that when this committee arise and report, they delete this section. I forget the number of it, but it's the section we have before us.

**CHAIRMAN GRAYBILL:** Section 1 of the article on Regulation?

**DELEGATE MAHONEY:** Yes. That's right. Now, Mr. Chairman—

**CHAIRMAN GRAYBILL:** Just a minute, Mr. Mahoney. Mr. Mahoney shall have a motion to delete Section 1 of the article on Regulation of Public Utilities. Very well.

Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, your committee heard a lot of testimony, and I think every time we were told that this should be legislative. The present Constitution—the present Railroad Commission are not in the Constitution. These are straightly by a legislative article, and the Legislature, if it wishes, could change it at any time it wishes. It could put in a one-man Commissioner, a five-man commission; it could be districts or any number of things. Now, the Legislative Council is studying this. We had the Chairman of the committee who is studying it, Senator Bollinger from down in Valley County at Glasgow—came in and asked the organization—the committee—to not put this in the Constitution, that they thought they could come up with a very good idea at the next session of the Legislature. And I have the absolute confidence of Mr. Bollinger. He has never at any time—he has never been, I'm sure, on any relation to the Montana Power Company. He's a groceryman down there, and he's been very tough, so I think he's a very honorable man. Now, the—if we had this in the Constitution, this one-man Commission—now, this is the question of Oregon's. We met Mr. O'Scanlin. He's a mightly personable young man. He had been in, I believe, about 9 months if—I think it's been a very short time. He was in the Attorney General's office, and immediately then he went to became the expert on rates. Now, I know he has staff, and he has lots of staff and Montana could have, but the funny part—the biggest operation that he has is operation of motor vehicles—he told us this—because they have a weight-distance tax out there, and it takes a lot to supervise that in the State of Oregon. Now, Mr.—the Chairman of this committee has stated that he wants it picked by appointment of the Governor. He thinks this will make the Governor more responsive—has all the problems. If everybody's going to have the Governor responsive, he's going to be in an awful thing, because he's got 20 big appointments to make on boards, and not all of them—there's most of them will be appointed. He has a lot of other appointments, and I don't think we can hold him responsible on this one appointment. I know he's got it, and I want to say this: first, it was not going to be confirmed by the Senate for a definite term, and I think he did a nice job of putting that in for a definite term. But I am quite a man to think that—let the electorate make their own mistakes. I know that a lot of you don't like the Commission. They happen to be all very good friends of mine—Mr. Steel, Mr. Boedecker, and Mr. Langley—and I want you to know I could name them. This, to me, are men—if—they got the most votes, and they were put on. Now, if we had—we've done this—maybe if you go out here, we would—I think the people can select their own Railroad Commissioners, and I'm sorry to use that word "railroad", because it's a very small—I certainly agree that the railroads are in the tough shape, but there's very little regulation of them, because they're regulated by other—the Interstate Commerce Commission. So I'm in hopes that Mr.—the Chairman—the minority report will not prevail. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman, I rise in resistance of deleting this article from the Constitution. I think perhaps this is one way that the consumer can protect itself against some of the regulation that is being done by some of our public utilities. When Senator Mansfield spoke before our committee, he told that our own Montana Power last year took in more than a million and a half dollars more than they did in 1970, but paid less in taxes, maintaining a national record of two—22 and 6 cents net profit for every revenue dollar. Now, I think something has to be done to regulate that kind of profit, and I think a one-man—as Mr. O'Scanlin says in his statement before the committee, perhaps I have chosen the only practical approach to a single Commissioner to quickly spot and work directly with selected staff members, including legal counsel that I can trust, and can grasp the regulatory direction I am pursuing and that I can help—and that can help me draw the kind of staff support I need. So I think this has merit, and I think that it is time that we, the people of Montana, take care of the consumers of Montana. And I don't think they have been taken care of by the Legislature.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, will Mr. Mahoney yield to a question, please?

**DELEGATE MAHONEY:** I'll try.

**DELEGATE REICHERT:** Well, first, Charley, I want to say you've ruined the poll I was conducting among the delegates. I was asking them to name the three Commissioners, and although some of them could name two, most of them on the third—

**CHAIRMAN GRAYBILL:** I don't think that's material, Arlyne.

**DELEGATE REICHERT:** All right. Well, my question is this: could you tell me if it is true that the Commissioner who is up for election is the one who usually votes on the side of the public?

**DELEGATE MAHONEY:** No, I don't think that's true. I don't think it's true at all. I think that these people vote their convictions. Now, this is—I honestly do.

**CHAIRMAN GRAYBILL:** Mr. Rollins.

**DELEGATE ROLLINS:** Mr. President [Chairman]. I do not wish to talk on the issue, because I think Mr. Heliker has explained it very well. I merely say that I oppose the motion to delete it and support Mr. Heliker.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I support the motion to delete, not simply on the grounds that this is legislative. Trying to legislate in this Constitution is not new to me, because I attempted to do that with the water section in our Natural Resources, and the learned wisdom of this body threw it out. The motives behind this—the proper regulation of rate utilities—are of the highest, and I am sure that our next Legislature will take a close look at this. But I do oppose this because, in my opinion, this is bad legislation. The first section replaces what is now a statutory three-man elected Commission—and I emphasize the word "elected"—and replaces it with a single appointee. Delegate Heliker referred to the efficient political institution of the utilities he is seeking to regulate. If they are sufficiently efficient to influence the election of three elected officials, I submit that they would be equally or more efficient in being able to influence a single appointee as well as the appointor. The comments that I will make concerning the Section 2, 3, 4, 5, which are not before this body at this time but are intimately interwoven with 1, relate directly to testimony which both our General Government and Local Government Committees have heard me give before, and that relates to our separation of powers. This bad legislation destroys the fundamental concept of our American democracy, and that is, having separate branches of government—Executive, Legislative and Judicial—all accountable to the people. This combines constitutionally all three of those powers into a single appointed official, accountable to no one except the person who appoints him. This is fundamentally wrong. Not only does Section 2 say the Legislature may confer Legislative, Executive and Judicial powers upon this single appointee, it goes much further and specifically says one of these powers shall be the determination of rates and tariffs. I submit this is presently accomplished by our Legislature. This is done through the Public Service Commission, which is a creature of the Legislature. They can abolish him, expand it, give them whatever powers they want, but it right now is in the hands of our Legislature. This would take that away and give it to one appointed man. Further on, in Section 2: "such rates and tariffs shall be just and reasonable". The Commissioner shall determine the weight and credibility of any evidence. We're giving the one appointed man the full powers of our courts to sit there as judge and jury in one appointee. Section 4: "this single appointee shall make use of the powers of his office to protect the customers". This is the enforcement—here comes the Executive power. And all three of these powers now merged into one man who's appointed. Delegate McCarvel referred to the consumer and how important it is that we have someone represent him. Under our present system, the consumer can vote the scoundrel out of office who ignores the appeals of the consumer. We can vote him out of office. There's no way you could get rid of this appointed Commissioner. Finally, this Section 5, upon ratification of this proposal—if this were in our Constitution and ratified by the people, as of that moment we would have taken away from the Legislature—we would have taken away from the people except by constitutional amendment any right, any power to regulate rates. Look at that section. "No power to regulate any public utility in respect of rates"—skipping down—"shall be conferred on any other official or agency". Forever locked into this Constitution, one man. We've taken away from the Legislature even the right to abolish the Public Service Commission or set rates or do anything else, upon ratification of this provision. One man would forever, until amended in this Constitution, have the exclusive power to set rates. In conclusion, I will simply repeat that I do not oppose this on the grounds that it's legislative, but that it is bad legislation and violative of the very principles of our separation of powers. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, fellow delegates. I think Charley Mahoney knows just as well as I do that this particular provision or anything roughly similar to it will never—I repeat, never—get past the Legislature in the State of Montana. I'm going to speak only once on this thing. I think it is a good idea because it's responsive—it will be responsive to the people in that, if that man's wrong, he's going right down the drain and so is the Governor that appointed him. And finally, certainly things can't be any worse than they are now and we need to do something new. I support Mr. Heliker's minority report.

**CHAIRMAN GRAYBILL:** Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman. I was happy to see this proposal in the report of this committee, because it was one thing that was brought up during our campaign. I didn't realize it was going to be in here, but I'm glad that it is. There were two committees which were greatly spoken about by the voters of our district. This was one of the committees. The people are completely disaffected by their actions, and they're completely dissatisfied. I recall at least two meetings where this was discussed at great length, and if I remember correctly, all four of the delegates from District 3 were there at the time. I hope that it will be discussed quite fully here on the floor, and it is my own opinion that I would support Mr. Heliker.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President [Chairman]. As a member of this committee, I rise in support of Mr. Mahoney's motion to delete. I'll make my remarks brief. I think Delegate McNeil has covered them very admirably, along with Mr. Mahoney. I'd simply like to point out one or two additional items. The first is, only one state in the Union has this system in operation and no state in the Union has it in their Constitution. This is in an Oregon statute; it's not in their Constitution. Secondly, only one other state has tried this. That was Rhode Island in 1967. Rhode Island abandoned it after 3 years, for what reason we do not know, but went back to a three-man Commission. We can only say for Rhode Island that it was fortunate for Rhode Island that it was in their statutes and not in their Constitution, so when they found it didn't work for them, they could abandon it without great difficulty. We had many people come to testify before our committee. I don't recall a single person that was in favor of this proposal. If any of the members of our committee think otherwise, they, of course, will correct me. We had one acknowledged expert in the field of utilities appear before our committee, and that's Senator Lee Metcalf. Everyone knows that he's long been active in this field, and he appeared before our committee and stated flatly unequivocally that this was a statutory matter and not a constitutional matter. Finally, we have the testimony of Mr. O'Scanlin himself, and he made one or two very revealing comments—one which surprised me; I wonder if the rest of the committee caught it. He said, "Of course, I could only last 5 or 6 years in this job." And immediately our ears pricked up, and we said, "Why?" He says, "Nobody could stand it any longer." Now, here we have a situation—a young man in the prime of his life, appointed to a job, and he could only hack it for 5 or 6 years. What happens then? He retires from the job, having been trained at state expense to be an extremely capable utility expert, and where does he go? He goes out into private industry and represents private industry in their rate applications before the State of Oregon. So, what Oregon actually has is a training ground for rate experts who will appear before them and against them. He stated also—this was not testimony, it was just conversation—I believe that there'd been five or six—pardon me, I think he stated that the longest term that any of these Commissioners lasted in Oregon was 5 or 6 years. Now, whether it was political or whether it was what he stated as being exhaustion, I'll leave it up to you.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President [Chairman]. I, too, was concerned about this, as I know everyone is here, and as the approach to try to solve these problems. But the leader in this field has long been Senator Metcalf. When everyone else—when a lot of people here weren't even born, he was carrying the fight on the utilities. And when he stood up in front of this committee as an invitee and said this doesn't belong in the statute, I was inclined to believe him. And here again we have the big dispute that we've gone back and forth with now for 46 days. The elected officials are responsible to the people on Tuesdays. Now we are on Wednesdays; now we're going to have one appointed person that's going to solve all that problem. On Mondays—or on—maybe we'd better make it Saturdays—we have the good legislative body that we're going to give the unlimited taxing power to, state welfare program, no ceilings, no limits. Now here today we have the bad Legislature that we can't trust to solve these problems—the people that represent the people. Then someone says they are the people, and the next day they vote against the Legislature having control to do anything. It's the highest degree of inconsistency to amend a statute by constitutional provision. The situation is bad, but you can't remedy a bad situation by writing in the Constitution. The people are going to have to remedy it from the grassroots up. Therefore, I support the motion to delete this and the rest of the section.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, I rise in opposition to Mr. Mahoney's motion to delete. I'm particularly limiting my discussion to Section 1, which his motion is to. There are some of the remaining paragraphs here that I have some disagreement. I have spoken before this body until I'm sure they're sick of hearing me talk about elected officials, and I'm now going to say that we should not have elected officials. In my—I've been born and raised in Montana, and during my majority the problem of the Montana rates—the Montana Power rates, Montana-Dakota rates, and the other rates—But many, many times there's a good deal of testimony as to how high these are, and I submit that they're—the testimony is they're among the—as high as there are in the nation. Now, the argument has been made that elected officials will take care of this, and I don't know how many elections there's been since I've been voting—I'd say in some 24 years or longer—each 2 years a Railroad Commissioner comes up. We've never gotten a Railroad Commissioner devoted to serve the people in during that time. I think the problem is insoluble. The rate applications don't come up that often. The public is angry at the time of the rate increase; they're indignant, they've got a situation that is impossible. Like everyone else's memory—one of those Commissioners is probably up about 6 years and then another Commissioner 4 years, and another Commissioner will come up in 2 years. And as Mrs. Reichert pointed out, very often that Commissioner is the sole Commissioner who votes against the rate increase, and even if he doesn't, there are so many people mad at him. I can remember one time when a very severe rate increase went through, and something like 10 filed against the incumbent. And if anybody knows anything about politics, they'll know that that man, with a very, very small plurality slipped through—probably got lapped by the rest of his ticket five or six times. The situation is impossible to solve. The Legislature won't solve it. They've had it since what, 1913? Nothing is going to be done unless this body does it, and the fact that it's legislative is immaterial. The fact that the Legislature some day might solve it, when they haven't solved it in the length of time it's been before us, is a good example why, if it's going to be solved, it must be solved by this body. Now, when I came into this body, I took the attitude that we should make certain improvements, maybe 10 percent. If we started making a lot of improvements we'd build up a lot of enemies, and while I think we've got an excellent Constitution that I'm going to support and vote for, I think we've made our enemies as we've gone along. And I think we've got to start doing something for the people, something that we can go out and, when the people say to us, "We're wondering why we should vote for your Constitution", we have a reason. We'll only have not one reason, but many reasons. Like Mr. Heliker, I think we long ago have taken on the Montana Power as an enemy. Whether we pass this, we pass the next one, which I call the PUD, doesn't make any difference. These people are going to vote and going to work and going to try to beat this Constitution, so we're not going to take on one additional enemy by accepting this measure. Now, the question is, are we going to have a better government? Now, the magic in numbers is whether we have three Commissioners, seven Commissioners, one Commissioner—makes little or no difference to me. But what the magic is, can we have a Commissioner who is responsive to the people? Under the elective system, I submit they are not responsive to the people. Mr. Heliker's figures in his speech covers that far better than I can do, but it's obvious we haven't been able to beat any of these Commissioners after they've voted in the wage increase. What is the one office—the one office that is always under the gun, the one office that people look to for responsibility when the state government is failing to function? The answer is obvious. It's the office of Governor. Many times Governors have been defeated, in the past, when they didn't have the power that they'd been given under the—this present Constitution and the amendments just prior, but now the Governor has the power to run this state. If there are mistakes, it's set up so that he will be exposed as an incompetent and can be defeated at the polls. If he's doing a good job, we should go in and retain the man. Now, what does Section 1 do? It says the Governor shall appoint this man, who shall be confirmed by either the—whatever the Legislature —it's one body or the other thing—for a term of 4 years which will coincide with the Governor's term of office. In other words, he doesn't take the last administration man unless he was doing a good job. He comes in, he's going to do a job, he takes a man that he's got confidence in, who will act fairly both for the power company and for the consumer, puts him in there, gives him full responsibility and says, "Let's go". And what happens? If the man doesn't perform either in his fairness to the utility or in his fairness to the consumer, the Governor may at any time remove the Commissioner for any cause deemed by him sufficient. In other words, if he's not performing, the Governor says "out he goes". And what advantage is this? The advantage is this: if the Governor appoints a man who doesn't do a fair job, doesn't do a good job, then he should fire him. If he doesn't fire him, then we—at the end of that Governor's 4 years, then we, the people, know who to look to for the responsibility. And under the elective system, we haven't been able to assess responsibility; we haven't been able to fight the interests. And I submit if we're ever going to be able to fight the interests on equal terms, it's going to be in that one office—of Governor. And I submit that this body is at a turning point. We can adopt something here that we can go back to the voters, and they want to know whether we should adopt this Constitution, we say, "Yes, there's one reason you should adopt it. We'll now have someone setting your rates who will be responsible to you, because if you don't like the job he's doing, if he's not doing the right job, then vote the Governor out." And you can be—better be sure that the Governor is going to be careful who he puts in. And I submit that if we are going to have a document we're going to go back and sell to the people, let's vote for this section; let's put it in here. Let's go back to the people and say, "We have an improved Constitution; support us."

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman, I believe in the chancellor system for the University. I believe in one man instead of a State Board of Equalization. I believe in one man for this Commission. I like to be able to point my finger at that one man who's sitting in a fishbowl, and, surprisingly enough, I'm in favor of this minority report. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker, do you want to—

Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, could I ask Mr. Holland a question, please?

**CHAIRMAN GRAYBILL:** Mr. Holland?

**DELEGATE HOLLAND:** It's a pleasure, Mrs. Babcock.

**DELEGATE BABCOCK:** If two truckers are applying for an MRC permit, do you think it's right that they appear before one man to get that permit?

**DELEGATE HOLLAND:** Mrs. Babcock, I may have misread this—and I don't really know about this. I take this as referring to public utilities, not—

**DELEGATE BABCOCK:** Well, the Railroad and Public Service Commission also establishes rates for truckers, and they hear hearings in regard to whether they will have a permit to haul gas. And I don't think that that should be very right to have them have to appear before one man.

**DELEGATE HOLLAND:** Mrs. Babcock, what I'm pointing out to you, this applies to utilities and not to truckers. The Railroad and Public Commission isn't abolished by this, but the utility function of the Railroad and Public Commission will be put over to this department. The Railroad and Public Commissioners, I presume, unless the Legislature changes it, will handle the trucking problems, and not this man.

**DELEGATE BABCOCK:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Doesn't the Public and Railroad Service Commission handle the trucking now?

**DELEGATE HOLLAND:** Yes, and they would continue to do so, is my understanding. The only thing this takes is the utilities. This is the

Montana Power, the gas rates, the water rates, the public—those are public utilities, you understand. A trucking concern is—hauls on public service and necessity. I see nothing in here—and maybe Mr. Heliker can direct me—but I see nothing in here where this Commissioner will take over anything but utility functions. It won't take over the trucking. Do you understand?

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, may I ask Mr. Mahoney a question? Is that right, Mr. Mahoney?

**DELEGATE MAHONEY:** I might state that the undertanding that I had in the discussion, everything that's under the Railroad and Public Service Commission would be left under it. Now, Oregon, this commission—this one-man commissioner handles all the trucks in Oregon, and he stated that. He has over 200 employees.

**CHAIRMAN GRAYBILL:** Mr. Heliker, can you answer that question before you—

**DELEGATE HELIKER:** Yes, I'd like to clear that up. It is the intention that all of the functions of the Public Service Commission and the Railroad Commission would be conferred upon the Commissioner. There is no reason whatsoever why he cannot perform those functions as well as a three-man Commission. It is done in Oregon. It is done by—through a staff, with hearing officers. The Commissioner makes the final decision. He's the man—he's the place where the buck stops.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I wish to oppose the Mahoney motion. I favor the one-man Commissioner. Normally I am in favor of people electing all policymaking public officers. This is not a normal situation. Ever since the Public Service and Railroad Commission was established, it has been going from bad to worse. I cannot concur with Delegate Mahoney's judgment on the manner in which the Railroad Commissioner whose term is expiring votes on rate cases. Normally, I think he votes for the people, while the other two vote for the utility. Now, this is not to say that the utilities are always wrong, but there are cases or—that I have been following for many years, and I have attended many hearings—I don't think the public gets a square shake. I think that Delegate Holland put his finger on a very important spot when he said that the Governor, in appointing a single Commissioner, would place himself in a position where he would have to appoint a very competent and reliable individual, because if the man failed to produce results and provide a fair and effective administration of the office, the Governor would be held responsible. And the Governors normally are seeking reelection or advancement to the United States Senate or some other post in the public, and I don't think that they would very likely keep an incompetent person upon the post. I know that this is probably statutory in essence, but I think that there are times when things that are statutory by their very nat're become constitutional. We observed that the Auditor, which could have been, and many people thought should be, statutory, all of a sudden became very constitutional in this body during this Convention. I don't think that you're going to get fair, equitable rate—utility rate administration unless you do something like this, and so I am going to vote against the Mahoney surrender and I'm going to vote for the minority report.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mr. Mahoney's motion to delete Section 1 under the Regulation of Public Utilities Article.

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I would like to speak to some of the points that have been raised. Mr. Davis agrees the situation is bad; Mr. Mahoney and McNeil don't speak to that question; but they all think that the next Legislature will act or that something will happen. I have here the transmittal letter from Senator Frank W. Hazelbaker, Chairman of the Montana Legislative Council, in which this report of the subcommittee that I spoke of previously was transmitted to the Forty-second Legislative Assembly, and I'd like to read you one paragraph in that transmittal letter. "The responsibilities of the Railroad and Public Service Committee—Commission are many and varied, making an in-depth examination difficult at best. You will note from the enclosed report that the subcommittee narrowed its field of interest principally to the sensitive area of the regulation of power generating utilities. The fact that it is 'sensitive'—and the word 'sensitive' is put in quotation marks—"and controversial area accounts for the fact that little unanimity of thought existed in the subcommitee, and the Legislative Council felt obliged to submit the subcommittee report to you"—quote—"without recommendation"—end quote. The quote marks are in the original. Now, I submit to you that there is absolutely no evidence whatsoever that the Legislature of Montana is about to act on this problem in any—in the foreseeable future. On the contrary, all of the evidence is in the opposite direction. This question has come before Legislature after Legislature after Legislature. In fact, every session there's been some bill to attack this problem, and they have gone down to defeat with very little consideration. Now, this has been attacked—although I am happy to see that Mr. McNeil is willing to fight it on the grounds of whether it's good or bad—but it's been attacked, naturally, on the grounds that it is legislative and that it shouldn't be in the Constitution and it isn't generally in constitutions. Well, I want to say, first of all, that there is precedents for this in the—in constitutions. It does appear in at least three constitutions that I have found, and in great detail in the constitution of the State of California. It appears in the North Dakota Constitution, where they set up a three-man commission, as you recently read. It appears in the Virginia Constitution. Now this proposal, with the five sections that I am proposing, which can be printed easily, double spaced, on two pages—less than two pages—is no public utility regulation act. Here is the laws of the State of Oregon administered by the Public Service Commission. This is a public utility act. What I am proposing is nothing like that at all. It is simply certain directions to the Legislature and an effort which will force—if adopted, will force the Legislature to open the Montana law and rewrite it for the sake of the people of Montana. Now, I'd like to speak also to the question of the cost of the single Commissioner, his expertise; the fact that he only lasts for a limited term; that he becomes trained by the state and then goes on to work for private industry. When I first began digging into this question before this Convention met, I met with some attorneys who were familiar with the problem, and I said to one, "If we were to adopt a single-Commissioner system, what would we have to pay such a man in order to get a qualified man who would do the job for the people of Montana?" And he said, "Well, I think you would have to pay around 30, 35 thousand dollars a year." Now, we held hearings on this subject at great length, and I and other members of the committee made a point of asking what we would have to pay the Commissioners, the three present Commissioners, in order to get good commissioners, and they said 30, 35 thousand dollars a year. So I was very interested when Mr. O'Scanlin, whom I think impressed all of you favorably, appeared here. And I asked him, "What do they pay you, Mr. O'Scanlin, over in Oregon", because I had said to my lawyer friend before, when I was first digging into this matter, I said, "I don't agree with that. I think that you could probably get some young lawyer—smart young lawyer who would take this over for a few years, between 20 and 25 thousand. Mr. O'Scanlin is paid $23,500. Now, I submit to you that we don't need to pay a hundred and five thousand dollars a year for a three-man Commission. We can hire a more capable single Commissioner for a small fraction of that amount. And if you want to ask—answer the question that has been asked on this floor several times—"Where are we going to get the money to pay for some of these things we've been adopting?"—here's one place you could get it. Now, this bright young man, like Mr. O'Scanlin—and there are lots of them around in the bushes; they're not so hard to find—this bright young man becomes an expert very rapidly if he has an effective staff. That's the key to the problem. You do have to have an effective staff. Everybody testified before our committee said our Commission doesn't have it; they ought to have it. I agree with that. We have five men at the present time in the Public Utility portion of the Montana Public Service Commission, which is a bit ridiculous, and they do not have, incidentally, merit system—merit principle protection. And I wonder how independent they are without that protection. Now, as to the fact that the single Commissioner, like Mr. O'Scanlin in Oregon, will last for only 5 or 6 years, this is certainly true—5 or 6 years, or at the most two Governor's terms, 8 years—and then go into private industry. There is, of course, no guarantee that he's going to be hired by some utility company. But it is a fact, in the federal commissions and in the other commissions, that when you get experts trained by—either in the staff or on the commissions—by the state at low salaries, that they do have a habit of—eventually of going to work for some private firm in the industry. This is just a part of our system. This is the way it works, and we might as well accept it. And if Oregon has a training ground, I would say Montana would be well advised to institute a similar training ground and take advantage of the training that we do. At the present time we do not have a training ground. Our Public Service Commissioners do not go out and get jobs with private—with public utilities; they don't become that well trained. Now, as to the objection that this is bad legislation, I am happy to meet the issue on this ground. If this is bad legislation—that is, having the Commissioner appointed by the Governor and violating, as Mr. McNeil says, the separation of powers doctrine—then all of the federal commissions are bad legislation also, because they are appointed by the President of the United States; confirmed by the Senate. And the recommendations of the Ash Council—and I remind you that these recommendations are not by wild-eyed radicals, but are by such people as Roy L. Ash, the President of Litton Industries, and by John B. Connally, who has never been accused of being a great liberal—they are certainly violating this principle, also. The fact is that these federal commissions are generally recognized as more effective than the state commissions, and here comes along the Ash Council and says they can be made more effective by appointing single Commissioners. Now, we did have witnesses in favor of the single-Commission form. I forget all of them at the moment, but Clyde Jarvis of the Farmers Union was one, and I have just had a letter from the 20,000-member Graingrowers' Association, endorsing the proposal—this specific section of the proposal, also. Now, as to Senator Metcalf's role in this matter. It is true, as I'm sure all of you know, that Senator Metcalf came before the committee. And although he agreed with me in every respect concerning what the problem is, the nature of the problem, what needs to be done about it, he did not agree that we should write it into the Constitution. That very same day, Senator Metcalf went before the Natural Resources Committee in this Convention in a hearing and advocated writing into the Constitution matter exactly parallel and fully as legislative as what you have before you at the present time. So the senator is not exactly consistent. I don't know the reason for his position; I haven't asked him, and I don't intend to. Now, one final comment that was made was "utilities are not always wrong". This is certainly true. In inflationary times it is inevitable that utility companies like Montana Power Company will, upon occasion, need—have good case for rate increases. But I want to point out to you that the Montana Power Company is very well provided for. It is not in a position of going begging. It is not an applicant for welfare. I have here in my hand a report of the percent return on common equity of 200 public utility companies, gas—class A and B electric utility companies in the United States, which shows the Montana Power Company with a rate of return to—on it's common equity, right at the top of the list. Now, you can argue about the way in which the particular percentage—and I haven't even bothered to mention it—is computed, but you can't argue about the comparability of these figures. The Montana Power is at the top of the list. It is one of the most profitable utility companies in the country, so that, although it has not always been wrong, I'm sure, when it has come before the Commission, it has received treatment which is beyond that that should be accorded it in liberality in the consumers' interest. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman and delegates. After 4, 5, 6 days of hearings on public utilities, as Vice-chairman of this committee, I have to support Delegate Mahoney's motion from this standpoint: that I believe this area is too complex for this committee to take under consideration as a whole. And I am not going to say whether we need an appointed Commissioner or a three-man elected one, but I think it's—should be left to the Legislature, to be more flexible. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue arises—

Mr. Mahoney, do you want to speak again?

**DELEGATE MAHONEY:** I would. I'ts my motion. I can—can I close, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Yes, if you want to.

**DELEGATE MAHONEY:** If there's nobody else—I don't want to cut anybody off.

**CHAIRMAN GRAYBILL:** All right, go ahead.

**DELEGATE MAHONEY:** Mr. Chairman, I've listened to all the discussion and I get a bang—elected officials, I feel, are responsible to the people. I think they have a great thing. They go out before them, and I do think they are responsible. Now, I know here, the last election, when a man run for the Public Service Commission and defeated a man who'd been on the Commission for years—in the Democratic primary, and you all remember it—so the people did know who they were voting about. Mr. Smith was defeated, and the new man went in. Now, he was defeated in the general election, I will admit, but the people did speak and they are—they have a right. Now, I just wonder right here, is only the Governor responsible? This is what bothers me. He makes the appointments, then are they—is he going to make the appointment? Only he is responsible. I think that this is a misconception. I wonder what this would be when the Governor gets ready for reelection. Boy, I'm telling you, campaign funds can really be got. This is something that I think the Governor could really use is—is there? Now, we've heard about the next Legislature. The next Legislature is going to be elected from the same districts and in the same manner as this group here was elected. I am sure—I don't think—I don't know how the Constitution is going to handle it. If it's a unicameral body, whether it will be in the next session of the Legislature or not; or we may have to wait for a year on this. But at the present time, as I see it, you're going to be elected from these same districts, the same people are going to do the electing that they have elected you. Now, if the—maybe this next Legislature, which has been redistricting—if you want responsive, this is the time to get it. I think the last Legislature has studied—and I want to say this: Senator Gordon Bollinger is making a study, as I've stated before, and he came before our committee, and he said, "We are studying this." Now, on the legislative thing that was mentioned by Mr. Heliker, this report—it's too bad that it was ever written that way by Mr. Hazelbaker. It's too bad, because he cut the limb right out from under a committee that he had appointed. Now, number three—and I'm not going to take much time—the Legislature has never appropriated enough money for staff over here, and I think we've got to blame the Legislature for that. I blame the Commission some, because I don't think maybe they've pushed it hard enough, but I believe that we have got this—they can have the staff if they want it. Now, if we come out here and the Legislature will not appropriate the money for the one-man staff, we haven't gained a thing. Now, I was surprised very much when Mr. Heliker said Senator Metcalf is not consistent. This bothered me. Lee Metcalf has been so consistent in that United States Senate, fighting power companies for years—he's stood out against terrific odds. Senator Metcalf did not quibble when he stated that this, he felt, was not—belong in the Constitution; this was legislative. Now, if he decided to go to another committee—and I don't know what the issue was—I heard him talk, and I thought he gave a good talk before both committees. Now, Senator Thiessen—this is another man that stood right down there and said, "I agree one"—"I support the stand of Senator Metcalf." Now, he's another Democrat, and he's very much in this power, so you're going out here. Here's three—one United States Senator, one state Senator—says this is not constitutional, and we have Mr.—Senator Bollinger, who is another senator, said this is legislative. And none of these men are—belong in anything in the conservative group. Thank you.

**CHAIRMAN GRAYBILL:** Very well—

**UNIDENTIFIED DELEGATE:** Roll call.

**CHAIRMAN GRAYBILL:** —the issue arises on Mr. Mahoney's motion to delete Section 1 of the article on Regulation of Public Utilities. A roll call vote has been called for. All in favor of Mr. Mahoney's motion to delete, vote Aye; all opposed, vote No.

Mrs. Babcock, for what purpose do you rise?

**DELEGATE BABCOCK:** To explain my vote.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE BABCOCK:** I'd just like to note—like the record to show that in voting for Mr. Mahoney, I am not supporting Mr. Metcalf. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Toole, for what purpose do you rise?

**DELEGATE TOOLE:** Mr. Chairman, to explain my vote—under Rule 20, conflict of interest.

**CHAIRMAN GRAYBILL:** Very well, have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |

| | |
|---|---|
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Nay |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Aye |
| Skari | Nay |
| Sparks | Aye |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Absent |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Nay |

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** I pushed the wrong button.

**CHAIRMAN GRAYBILL:** All right, the record may show Mrs. Bates pushed the wrong button.

**CLERK HANSON:** She's voting No, then?

**CHAIRMAN GRAYBILL:** No, she can't change it. She just has to explain it. It doesn't change the vote.

**CLERK HANSON:** Mr. Chairman, 58 delegates voting Aye, 37 voting No, 5 not voting.

**CHAIRMAN GRAYBILL:** Mrs. Sullivan, for what purpose do your rise?

**DELEGATE SULLIVAN:** Mr. President [Chairman]. I'm sorry, I pushed the wrong button. I'd like to be on record as being on the other one.

**CHAIRMAN GRAYBILL:** Anybody else push the wrong button?

Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I didn't push the wrong button—

**CHAIRMAN GRAYBILL:** For what purpose do you arise?

**DELEGATE SCANLIN:** —but I certainly want to thank the members of this Convention for supporting the majority. Thank you.

**CHAIRMAN GRAYBILL:** Very well, 58 having voted Aye, 37 having voted No, the Section 1 of the Public—the Regulation of Public Utilities Article is deleted.

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman—

**CHAIRMAN GRAYBILL:** Do you want us to read Number 1 of your amend—of your substitute motion?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** Will the Chair read—will the clerk please read Number 1 of Mr. Heliker's substitute motion. Is it passed out, Mr. Heliker?

**DELEGATE HELIKER:** It's being passed out now.

**CHAIRMAN GRAYBILL:** Very well, pass it out. Go ahead and read it. Pass it out, yes, please.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 1, page 16, by substituting the following: 'Section 1, Regulatory authority. The Legislature shall provide by law for a regulatory authority, which may consist of one or more Commissioners, who shall be appointed by the Governor and confirmed by the Legislature (Senate) after public hearings, for terms which shall be provided by law. The Governor may at any time remove a Commissioner for any cause deemed by him sufficient, after such public hearings as may be provided by law.' Signed: Heliker." Mr. Chairman.

**CHAIRMAN GRAYBILL:** May I see it, Mr. Clerk? Lines 8 through 16 having been deleted, your motion is slightly different—should be slightly different, but in any event the Chair understands it to be your purpose to insert this in place of Section 1 deleted. It is substantially different. The Chair will allow you this change, Mr. Heliker. Do you want to speak to it?

**DELEGATE HELIKER:** Mr. Chairman, if a substantial number of delegates voted against the idea of a single Commissioner, I would like to give them the opportunity to vote for a reform of the process of regulation by retaining—by allowing the Legislature to determine how many Commissioners there will be, but by retaining the central idea of the original proposal that they be appointed by the Governor.

**CHAIRMAN GRAYBILL:** Mr. Heliker's motion is to—simply to substitute another Section 1, the purpose of which is to say that the Legislature shall provide by law for a regulatory authority, which may consist of one or more Commissioners. In other words, it gives the Legislature the right to have as many Commissioners as they want, instead of one; and a few other changes that you can see in what's been passed out. Is there discussion?

Mr. Mahoney.

**DELEGATE MAHONEY:** I—we're still getting back to the appointive concept of this; and I am just as much opposed to this amendment as I was the last one, because we're going straightly to appointive Commissioners and was no—that's so little different from the other one, I certainly oppose the motion.

**CHAIRMAN GRAYBILL:** Very well, now, the issue is appointive and the issue is more than one. Does anyone else care to speak to it? Do you want a roll call vote, Mr. Heliker? Do you want to close? Mr. Heliker, do you want a roll call vote, or do you want to close?

**DELEGATE HELIKER:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well, he wants a roll call vote. Mr. Heliker's motion is to substitute for Section 1 of the regulation of public utilities the material placed before you, which has the effect of having an appointed Commission—or giving the Legislature the right to supply an appointed Commission of more than one member. All in favor of that, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Absent |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 36 voting Aye, 56 voting No.

**CHAIRMAN GRAYBILL:** 56 delegates having voted No and 36 delegates having voted Aye, the substitute section is defeated.

Mr. Heliker, what's your pleasure about Section 2?

**DELEGATE HELIKER:** I move the substitute motion that you have up there, entitled "Powers of a Public Service Commission".

**CHAIRMAN GRAYBILL:** Do you know which number it is?

**DELEGATE HELIKER:** I don't have a number on mine. It's Section 1, Powers of Public Service Commission.

**CHAIRMAN GRAYBILL:** Very well, do you wish to move that?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** Mr. Clerk, will you read this one. What's the number?

**CLERK HANSON:** "Mr. Chairman. I move as substitute language for deleted Section 1 the following language—quote: 'Section 1, Powers of Public Service Commission. The existing Railroad and Public Service Commission, or any successive agency provided by law, shall have such jurisdiction and such Legislative, Executive and Judicial powers as are conferred upon it by the Legislature and this Constitution, which are cognate and germane to the regulation of public utilities as defined by law. In exercise of such powers, one of which shall be of the determination of rates and tariffs of the utilities over which it may be given jurisdiction, the Commission shall not be required in considering evidence presented before it to consider any particular theories or methods for determining such rates and tariffs, and such rates and tariffs shall be just and reasonable. The Commission shall determine the weight and credibility of any evidence that is introduced. The manner and scope of review, if any, of the Commission's actions in a court of record shall be provided by law.' Signed: Heliker." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Mr. Heliker has proposed the second substitute section for Section 1, which provides that the existing Railroad and Public Service Commission or any successive agency shall have jurisdiction that the Legislature provides, but it goes on to explain some of the other features of that Public Service Commission.

Mr. Heliker, would you care to explain it?

**DELEGATE HELIKER:** Mr. Chairman, this is actually a substitute for Section 2 of the proposal, renumbered Section 1 since Section 1 has been knocked out. There is one typographical error on line 2. The word "successive" should read "successor".

**CHAIRMAN GRAYBILL:** "Successor"? Very well, the Chair now understands that Mr. Heliker's position is that Section 1 about a Public Utility Commissioner, having been knocked out, Section 2 talks about powers of Commissioners. That would not be appropriate, and you're now suggesting a section on powers of Public Service Commissioners, which would be in place of Section 2 in the book. Is that correct?

**DELEGATE HELIKER:** That is correct.

**CHAIRMAN GRAYBILL:** Very well. Do we all understand that the proposed language that has been handed out to you is in place of Section 2 in the books? And are you withdrawing Section 2 in the book?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** Section 2 in the book is withdrawn, and we'll now consider Section 2—or Section 1 restyled, on powers of Public Service Commission.

Mr. Heliker.

**DELEGATE HELIKER:** If the committee would refer to page 21, the wording of this substitute that you have before you is identical with that contained on page 21 except that it now applies to the existing Public Service Commission rather than to the proposed Commissioner or regulatory authority. Now, this is really quite a separate issue, and this section standing alone is extremely important to the reform of regulatory law in Montana and the effectiveness of the present Public Service Commission. In my opinion, as I have expressed it adequately, I think, the present Public Service Commission, until it is reformed, will not be anything to be proud of. But the fact is—and we had testimony in great detail before the committee—that the present Public Service Commission or any regulatory authority established by the Legislature without change in the existing statute is bound by a law established—written by the Supreme Court of Montana which is obsolete, outmoded, and prevents the Commission from effective regulation. I can go over this with you; it's not very long. The history of regulatory law is too lengthy and complex to be set forth adequately in any space less than a large book, and I'm not kidding about that. There are many large books written on this subject, and I've read several of them. We can only say here that the Montana utility regulation has muddled along under the burden of law labeled obsolete by the United States Supreme Court more than a generation ago. The leading Montana case, which is the present ruling case—Tobacco River Company versus Public Service Commission, decided in 1940—was an accurate statement of the law as enunciated by the United States Supreme Court up until that time. But only 2 years later, that court handed down the first of a series of decisions generally known as the natural gas cases—in Natural Gas Pipeline versus Federal Power Commission, 1942—which revolutionized regulatory law as interpreted by that court. The court went further, and further emphasized the change in 1944 in FPC versus Hope Natural Gas, which is now generally regarded as the leading case in federal law. Many other state Supreme Courts followed the lead of the federal court—as did, for example, The Utah Supreme Court in Utah Power and Light versus Public Service Commission, 1944—and freed their state regulatory bodies from the shackles of the arcane fair value rule. The Montana Supreme Court, however, chose, in State versus Public Service Commission in 1957, to keep the Montana Commission in the dark ages of regulatory law; and testimony before this committee was virtually unanimous that the Montana Commission is, in fact, bound to the fair value rule until the law is changed by the Supreme Court, by the Legislature, or by this Convention. It is the minority's belief that the first two are not likely to act. It is the minority's belief that this Convention should act for the people by freeing the Public Service Commission from the fair value rule. The specific language of the proposed section is designed to free the Public Service Commission to exercise its best judgment, to weigh the evidence subject to no court-imposed theories, save only that the result be just and reasonable; which is, incidentally, the language in the present act and the standard imposed by the United States Supreme Court, to which he would be held by that court—which, I should say, it would be held by that court—in any case. Otherwise, the section preserves the Legislature's full discretionary power to define the Commission's powers and jurisdiction and define the meaning of "public utility". The last two sentences of the section are designed to prevent the court from substituting their judgment for the Commissioners', so long as they find the result of its deliberations just and reasonable and arrived in it—at in a manner not contrary to procedural due process of law, and to empower the Legislature to restrict Judicial review of the commission's actions if it so chooses. Those last two sentences, by the way, are taken from the language proposed by the California Constitutional Revision Commission. Now, I think I should take a few moments to explain the so-called fair value rule and what it does to utility regulation in Montana. This dates back to 1898, when the United States Supreme Court, in the case of Smythe versus Ames, listed about 15 different things which it said regulatory commissions must consider in determining a rate base. Now, a rate base is simply the valuation placed upon the property used by the utility for the public's benefit, and the theory is that in conjunction with such a rate base and a so-called fair rate of return, one then arrives at an amount in dollars which would be called a fair return—that is, the amount which the utility is allowed to collect from the ratepayers to pay the cost of capital to the firm—that is, to pay the—a reasonable return on its investment. Smythe versus Ames included all sorts of nonsensical things, including the market value of the stock which, of course, is determined by the rates allowed through the utility and, thus, circular reasoning. They also threw in some things, including a strange animal called reproduction cost. Now, it would take a much longer lecture than I have time to deliver to tell you about all the intricacies of reproduction cost, but it is a totally unworkable, a totally fictional value which the courts—the federal court—the United States Supreme Court, up until 1942, imposed upon the state and the federal commissions. But in 1942 and 1944 in the natural gas cases, the federal court finally decided that this formula was unworkable and said that it would no longer inquire as to the method of valuation used by the Commission, provided that the result was just and reasonable. And that is now the standard applied by the United States Supreme Court. The Montana Supreme Court, on the other hand, decided—contrary to the decisions of other states' Supreme Courts which followed the Hope natural gas case, decided that the old Smythe versus Ames rule, as modified over the years in many, many cases and as set forth in Montana in the Tobacco River case, must still be applied by the Montana Public Service Commission. Now, the statute does not specify any such formula; this was written into the law by the Supreme Court. There have been people who have said that the Public Service Commission has the power, if it only would assert it, to free itself from the fair value rule; and we inquired carefully in our hearings as to the truth of that theory and, I think, established beyond a shadow of a doubt that the Public Service Commission does not have the power to free itself from the fair value rule—that if it failed to consider reproduction costs, that the Montana Supreme Court would strike down its order. It has also been suggested that the Commission in Montana could achieve the same results by simply varying the rate of return. You multiply the rate base or valuation found by this strange mixture called fair value by a rate of return, and so your final result is a compound of the two things: the value and the rate of return. And it is said all the Commission has to do is simply to reduce the rate of return and you'll arrive at the same result. So we asked in a—we asked—I asked practically every witness that came before the committee who was qualified to answer the question if this would work. We asked Mr. Langley and Mr. Johnson of the Commission staff if this was possible, and they answered, no, it was not possible; if we reduced the rate of return, the Montana Supreme Court would regard it as circumvention of the rule, and they simply wouldn't get away with it. And I think there is no question that that is true, so that we are at the present time stuck with this system whereby we throw into a pot a whole series of things. And let me list them for you: reproduction cost—that's reproduction cost new, reproduction cost new depreciated, original cost new, original cost depreciated, assessed value, and cost of capital. Now, what assessed value, which is evaluation for tax purposes, has to do with it, no one has ever explained. And every witness who was questioned on this subject said it doesn't have anything to do with it, but it nevertheless is required by the Montana Supreme Court to be considered by the Commission. All of these things are thrown into a pot, stirred up, and the staff of the Commission comes up with some kind of an answer called a fair value of the corporation's investment. Now, the way—the result of this is that the Commissioners can decide among themselves what rate of increase they want to give to the applicant utility company and they can tell the staff, "That's what we want to give them." And the staff then can, with this mixed-up formula, come up with a justification for any answer that the Commission wants whatsoever, which means that regulation is the opposite of scientific. It has nothing to do with real numbers; it has to do simply with figures which the Commission pulls out of its hat. Now, the way in which most of the Commissions in the country and the federal commissions go about this is to use a straightforward, honest, easily ascertained value, which is the original cost to the corporation, depreciated according to some accepted formula, to arrive at an accounting value which can be attained very easily from the books of the corporation. And you don't need a lot of engineers employing phony formulas to arrive at something called reproduction cost new, which, as I say, no matter how carefully done and how much money they spend on it—and sometimes they spend as much as $3 million on it—is strictly fictional. And that is presumably what the Commission would, under this section, adopt, because it is the logical and sensible and the easy thing for the Commission—the workable thing for the Commission to do. This section, however, does not require them to adopt such a method. They could, as a matter of fact, readopt the present method, which simply says they do not have to—they cannot be required to use any particular theories or methods for determining rates or tariffs in considering the evidence which is presented to them. They are freed from the handcuffs which the Supreme Court has imposed upon them. And that is the purpose—the main purpose of this section. Now, the last two sentences, as I've explained, are devised for the purpose, and are taken directly from the California Constitution, to insure the independence of the Commission from meddling by the courts. If you go back over the history of public utility regulation in this country, you find that the great curse—the thing which has made it ineffective—has been the substitution by the courts of their relatively uninformed judgment for the supposedly expert judgment of the Commission; and this would prevent that in Montana. It would, however, allow the courts to review the decisions of the—and the orders of the Commission to determine whether they are just and reasonable; but if it found evidence that they were just and reasonable in the record, then it would have to uphold them. Thank you.

**CHAIRMAN GRAYBILL:** Very well. Mr. Brown.

**DELEGATE BROWN:** Mr. Chairman. Mr. Heliker does not like the method of fixing rates by reproduction cost new, and he wants original cost less depreciation. I have been in these rate hearings, and they're extremely complicated field, and I doubt if practically anyone in this room could be an expert on rates. Maybe one or two are, but it's a technical field. The very evil that Mr. Heliker is trying to avoid he has written into this Constitution, because he says that this Commission may adopt any theory whatever that they want. So we're precluding the Legislature or the courts or anyone else from changing an unfair ratemaking base and we're just getting into a field we're not competent in. And we cannot write a rate theory into the Constitution; therefore, I request that this section, as amended, be not adopted.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I might state that this section—it's all statutory—and the Tobacco River case was decided on a statute. And they agreed at that time—and I want to say and I want to be fair to this Convention—Associate Justice Erickson was on the board, and nobody can say that he is any friend of the power company—of the—I was on the court at the time the Tobacco River case was in. Now, to go—this is what—I agree with Mr. Brown that this is a very touchy situation, to write law like this and have to make a decision here. Now, this takes a lot and I, maybe—I don't know. You get into the law, and I have an awful time to decide just what is correct and what isn't correct. Now, personally, I would like to see the next Legislature go out and do this that the people are going to elect, and I am sure after Mr. Bollinger talked like he talked, they're going into this quite deeply. And I'd just like to see us now not put a piece of law into this Convention. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, just briefly; even though this is a substitute section, it still contains a constitutional provision giving one governmental commission, even though it's elective—giving one commission Legislative, Executive and Judicial powers. We don't give that power to the Governor; we don't give that power to the Supreme Court; we don't give that power to any legislator; and it ought not to be anywhere in this Constitution. In addition, it is an attempt to set up, as Delegate Mahoney said, in the Constitution a method for rate determination. Let me warn you what can happen if this is adopted. And if the Supreme Court of this state were to give a very narrow construction to that, the only way it could be changed would be by constitutional amendment or to get that court to change. Now, the system that Delegate Heliker is concerned about evolved legislatively and can be changed legislatively, and if the court has given the wrong interpretation to that legislatively established rate determination—if the court makes a wrong decision, you can go to the Legislature and correct it. If we put this in the Constitution and the court makes a decision we don't like, you've got to get that court to change its mind or have a constitutional amendment, and we can't do it through our elected representatives in the Legislature. I urge that for the same reasons we oppose this section.

**CHAIRMAN GRAYBILL:** Mr. Heliker, do you want to close?

**DELEGATE HELIKER:** No, Mr. Chairman, I do not want to close. I want to ask Mr. Mahoney a question.

**CHAIRMAN GRAYBILL:** Mr. Mahoney?

**DELEGATE MAHONEY:** I'll try.

**DELEGATE HELIKER:** Mr. Mahoney, I have in my hand a copy of an article—news report which appeared in the *Billings Gazette* January 29, 1970, in which one Charles Mahoney is quoted as saying—I'll read it: "Mr. Charles Mahoney, former Executive Director of the Montana Legislative Council, claims he was forced out of his job by the Montana Power Company. He resigned last week. Mahoney was in Billings Wednesday to address County Extension Clubs. 'They didn't do it directly,' Mahoney says, 'it was done strictly by their man Hazelbaker.' Montana Power—quoting now—'Montana Power is sitting behind the scenes. You can't blame them. They have quite a little thing going for them up there, and they want to keep it', Mahoney says. 'The pressure came from the Montana Power. A lot of fellows would have taken it; I wouldn't', the one-time Montana state Republican majority leader said."

**CHAIRMAN GRAYBILL:** Mr. Heliker, the Chair has listened carefully and you haven't said anything in there about the Tobacco River case or this section. And I think it's out of order—

**DELEGATE HELIKER:** I was coming to it, Mr.—

**CHAIRMAN GRAYBILL:** —so I'll rule it out of order.

**DELEGATE HELIKER:** —Chairman, it's right down the line here, just about two words.

**CHAIRMAN GRAYBILL:** Well, I think it's unfortunate you read the rest of it then. I think it's out of order, and I'm going to rule you out of order. Do you have anything else to discuss on Section 1—the substitute Section 1? Anyone else want the floor?

**DELEGATE HELIKER:** I have something else I'd like to say, Mr. Chairman.

**CHAIRMAN GRAYBILL:** All right. Mr. Mahoney, do you have anything to say on Section 1?

**DELEGATE MAHONEY:** Mr. Chairman, all this proves is that I'm not working for the Montana Power Company. (Laughter)

**CHAIRMAN GRAYBILL:** Very well, Mr. Heliker, you may speak now.

**DELEGATE HELIKER:** Mr. Mahoney said in that—on that occasion that they used replacement cost less depreciation. Some of these things have been depreciated out twice and are going into their third depreciation. And what I wanted to ask Mr. Mahoney is what he meant by that.

**CHAIRMAN GRAYBILL:** I'm not trying to stop you from asking him about concepts, but I think the letter was far beyond the scope of this, and I'm going to hold you people to what you're talking about now. Now, you've explained rather well what reproduction cost new is and what the—what the fair value is, and you're going to have to take your chances with the body—so am I—as to what they think. So let's get on with it.

**DELEGATE HELIKER:** Well, if Mr. Mahoney doesn't want to answer, I'll go on.

**CHAIRMAN GRAYBILL:** Well, you haven't asked him a question. You want to ask him a theoretical question, okay; but I don't think you should have read the letter and I ruled you out of order. If you want to ask him a question about some concept, you go right ahead.

**DELEGATE HELIKER:** Well, will he yield?

**CHAIRMAN GRAYBILL:** I'm sure he will.

**DELEGATE MAHONEY:** I'll try, Mr. Chairman.

**DELEGATE HELIKER:** I want to know, Charley, what you meant by that when you said that—"he's the one behind looking at the original base less depreciation as a method to fix electrical rates for Montana Power Company". But that's not what is used. They use replacement cost, less depreciation. Some of these things have been depreciated out twice and they're going into their third depreciation. What did you have in mind?

**DELEGATE MAHONEY:** Some of these dams have been constructed for approximately, I guess, probably 60 years, and they have been depreciated out. And I do not agree with the question of original cost—or new depreciation—new reproduction cost—

**CHAIRMAN GRAYBILL:** Reproduction cost new.

**DELEGATE MAHONEY:** —depreciated. I do not agree with that, and I think that this is the point, but I was discussing the Tobacco River case in this case here, which is statutory and this is what you have here. And you aren't changing a thing on this, if you—

**CHAIRMAN GRAYBILL:** Okay, Charley, you've answered. Now, if you've got another question—

**DELEGATE HELIKER:** Will Delegate Mahoney yield to another question?

**CHAIRMAN GRAYBILL:** Okay, another question.

**DELEGATE HELIKER:** You say the Tobacco River case is statutory. What do you mean by that?

**DELEGATE MAHONEY:** That the statute—the section—the Tobacco River case was decided on one section in the statutes. And that's—you know that just as well as I do, and it's there. It's not in any constitution or anything.

**DELEGATE HELIKER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, Mr. Heliker.

**DELEGATE HELIKER:** I know of no such thing. The Tobacco River case was decided as a matter of fact—I have a copy of it here right beside me—was decided on the basis of the whole history of the law up to that time. And I have said that the Tobacco River case was an accurate statement of the law at that time; and the fact that Mr. Erickson was on the court and voted for the court's decision proves nothing at all, because it was an accurate statement of the law at that time. Two years later, the United States Supreme Court reversed that law, changed it entirely, and the Montana Supreme Court has never gone along with the United States Supreme Court. Now, I want to reply to Mr. O'Neill's statement that we are attempting here to set up a method for rate determination. No such thing. We are simply trying to free the Public Service Commission to adopt a rational method of rate determination. We are not trying to impose upon them any method. Now, this—Mr. O'Neill, I believe it was, said—McNeil, excuse me—said also that the system has evolved legislatively. This system was established in 1913, and it has not evolved since. The only evolution has been by court interpretation, by the decisions of the Montana Supreme Court, which has, since 1940, refused to evolve at all. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Heliker's substitute motion for Section 1, Powers of Public Service Commission. You all have it before you. So many as shall be in favor of it, vote Aye; so many as shall be opposed to it, vote No. It allows the existing Public Service Commission to exist, but it does require that—it does state that the Commission shall not be required, in considering evidence, to consider any particular theories. That's the gist of it. Now, all in favor of it, vote Aye; and all opposed to it, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |

| | |
|---|---|
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Absent |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 35 delegates voting Aye, 52 voting No.

**CHAIRMAN GRAYBILL:** 52 delegates having voted No and only 35 Aye, the motion is defeated. Section 2 has been withdrawn.

Mr. Heliker, I don't see another Section 2 here. Do you want to move on to Section 3, or what's your pleasure?

**DELEGATE HELIKER:** That was Section 1.

**CHAIRMAN GRAYBILL:** Well, that was a Section 2 restyled Section 1, right?

**DELEGATE HELIKER:** Yes, we have a substitute motion for Section 3, restyled Section—

**CHAIRMAN GRAYBILL:** What about Section 3? Are you withdrawing the existing Section 3?

**DELEGATE HELIKER:** Yes, and substituting therefor the one you have.

**CHAIRMAN GRAYBILL:** The one that starts, "Impartiality of staff"?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** Very well, the pages may put it out and the clerk will read the section. It's styled Section 3. We won't worry about its styling; that's what it replaces.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 3, page 17, by deleting its entirety and substituting the following language: 'Section 3, Impartiality of staff. In the determination of rates and tariffs, the authority shall be provided with staff personnel and help in such determination and recommendations of the staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant.'" Mr. Chairman, Section 3—"Signed: Heliker."

**CHAIRMAN GRAYBILL:** May I see it, Mr. Clerk? Now, the clerk—the Chair will allow Mr. Heliker's amendment to substitute this language for present Section 3. The Chair will observe that the word "the authority" appears therein. If the motion—if the section shall pass after we have considered it, then the Chair will consider other amendments to change the word "authority" to "Public Service Commission", which I presume you would mean, Mr. Heliker, in the event it passed. Is that right?

**DELEGATE HELIKER:** I thought that it said "Commission", but I didn't keep a copy.

**CHAIRMAN GRAYBILL:** You need a copy of it? Will one of the pages give Mr. Heliker a copy. Oh, well—very well, the Chair had another one in hand. Very well, the one that Mr. Heliker wants considered at this time, apparently, is Section—is styled Section 2—we'll ignore the styling. It does say "in the determination of rates and tariffs, the Commission shall be provided"—so it's all right and I'll withdraw the other one, Mr. Heliker.

**DELEGATE HELIKER:** Yes, Mr. Chairman, this applies to the present Commission and simply says that in the determination of rates and tariffs, the Commission shall be provided with staff personnel and help. The help is there for provision for consultants, outside consultants, and that they—the recommendations of staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant. Now, the point here is that the Commission should be representing the public interest, the staff should be representing the public interest as the employees of the commission, and their reports should be impartial and should have the standing as the recommendations of impartial persons, as opposed to the partiality of the material, evidence, presented to—and conclusions presented to the Commission by either the applicant or any persons or organizations who may be protesting the application.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Yes. Will Mr. Heliker yield to a question or two?

**CHAIRMAN GRAYBILL:** Mr. Heliker?

**DELEGATE HELIKER:** Yes.

**DELEGATE HARPER:** It is my understanding that the Railroad and Public Service—Public Utilities Commission—is at present statutory instead of constitutional. Is that correct?

**DELEGATE HELIKER:** That's correct.

**DELEGATE HARPER:** And is it also correct that nowhere, so far, in our new Constitution have we mentioned that Commission?

**DELEGATE HELIKER:** That is correct.

**DELEGATE HARPER:** And are you proposing now that we just have this thing that starts off, "In the determination of rates and tariffs, the Commission shall be provided"—and yet such Commission has not been named yet?

**DELEGATE HELIKER:** Well, Mr. Harper, I expect that if this were passed, Style and Drafting would take care of that and where it would go in the Constitution. I don't know, but the "Commission" obviously would say "Public Service Commission".

**DELEGATE HARPER:** Now, may I ask one more question, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Yes, Mr. Harper.

**DELEGATE HARPER:** Then, do I understand that you want to write into the Constitution the present Railway and Public Service Commission?

**DELEGATE HELIKER:** No. I think that's a good point, Mr. Harper.

**DELEGATE HARPER:** Yes. Mr. Chairman, I've been right with Mr. Heliker all along this afternoon, and I understood him not to want to write the present Commission into the Constitution, is the reason I'm raising this question. I'm not badgering the witness.

**DELEGATE HELIKER:** That's all right; I don't mind a little badgering. No, the—Mr. Harper does have a very good point, Mr. Chairman, and this should read "the Public Service Commission or successor agency", just as the recently killed Section 1 would have read.

**CHAIRMAN GRAYBILL:** All right, the Chair will rule that you may discuss the matter. If it passes, we will then consider making the language "the Commission" more artful. I understand that you have a way of amending it so that it can cover the present Commission or any other substitute Commission that the law might provide for, and let's take that up after we've had the vote on whether or not the Convention is interested in putting the impartiality of staff in the Convention, Mr. Heliker.

**DELEGATE HELIKER:** Yes, there really are two issues here in addition to the one I've already mentioned. There is the fact that the people who testified before the committee were unanimous in their statement that the Commission is understaffed, that it should have more adequate staff. So the first part of this is a—in effect a direction to the Legislature to provide that staff. The second part is—would establish a standing for the staff which it does not have now.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman, fellow delegates. I, along with Delegate Harper, am a bit puzzled about this. I went along with Delegate Heliker on his proposals, but they were obviously beaten, so I believe that 3, 4 and 5 no longer apply and should be deleted.

**CHAIRMAN GRAYBILL:** Well, he has withdrawn 3, and this is a substitute for 3.

**DELEGATE ARONOW:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** I might be able to shed a little light on this proposition. I've been involved with some rather lengthy hearings before the Federal Power Commission in Washington, D.C., and they have a like provision where they have a staff that makes an independent investigation and comes up with costs. My case happened to be under the Natural Gas Act. It makes an independent study of natural gas, reserves, cost of pipelines, and all that type of thing. And that investigation and their conclusions may well differ from those of the applicant and those of the protestant, but their conclusions are supposedly made on an impartial basis, with no interest in the outcome of the case, whatever it may be, and that is taken into consideration by whether it be the examiner or the full—the Commission. And I thought this explanation might be helpful to this body. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, it would seem to me this would look kind of funny in the Constitution now, after all this has been taken out, and I am sure that this has to be the Legislature can handle it. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mr. Heliker's motion to substitute the language styled Section 2, Impartiality of staff, for withdrawn Section 3. Do you want a roll call vote?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** Very well, we'll have a roll call vote. So many as are in favor of that, please vote Aye; so many as opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Absent |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |

| | |
|---|---|
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Absent |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. Chairman, 31 delegates have voted Aye, 56 have voted No.

**CHAIRMAN GRAYBILL:** 56 having voted No and only 31 Aye, that motion is defeated.
Mr. Heliker, what's your pleasure on Section 4? Do you want to withdraw the written Section 4?

**DELEGATE HELIKER:** Yes, and substitute therefor the one you have before you.

**CHAIRMAN GRAYBILL:** All right, we'll withdraw Section 4, and you want to substitute the one that says, "Duty to represent customers. The Commission—"?

**DELEGATE HELIKER:** Yes, but I want to change those words again.

**CHAIRMAN GRAYBILL:** All right, it would be the "Public Service Commission or other appropriate agency"?

**DELEGATE HELIKER:** "—or its successor agency", or something of that sort.

**CHAIRMAN GRAYBILL:** Very well, will the clerk read it, and the clerk may read it "the Public Service Commission or other successor agency" this time. We'll clear that all up. We'll allow Mr. Heliker to do that. Will the clerk read proposed Section 3, Duty to represent customers.

**CLERK HANSON:** "Section 3, Duty to represent customers. The Public Service Commission or successor agency shall represent the customers of any public utility and the public generally in all controversies respecting rates, valuations, service and all matters over which it may be given jurisdiction, and it shall make use of its jurisdiction and powers to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at just and reasonable rates. Signed: Heliker."

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, this section by itself is worth adopting. It is the language of the Oregon statute. It establishes a much more—much stronger position for the Public Service Commission to represent the consumer and the public generally.

**CHAIRMAN GRAYBILL:** Very well. Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I hope I'm expressing the feeling of a good many people who maybe have been voting against the others—

**CHAIRMAN GRAYBILL:** Mr. Harper, excuse me. Has that been passed out? All right, pass it out. Let's hold everything up till we see it. Let's get two or three more pages working on it and get it out quickly.

**DELEGATE HARPER:** It really is Section 4, just as it is, with a few minor changes.

**CHAIRMAN GRAYBILL:** It's styled Section 3; it's like Section 4.

**DELEGATE HARPER:** I'm not going to make a speech on it; I'm just going to say I'm going to support it. I think Mr. Heliker is right. This paragraph can stand by its own, does have meaning, and as he says, this is a section in the Oregon Constitution. And it seems to me the kind of thing that ought properly to be in a constitution.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. Chairman, I rise to support this substitute section—motion by Mr. Heliker. I've sat here this afternoon and watched some of the big boys, evidently, win the case, and out in the lobby I see them smiling. I think it's about time maybe we get a Public Service Commission that is responsible to the people and that represents us instead of them.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. Again, this seems it's an Oregon statute, as I understand it, and I'm sure that we can be sure and get this over to the next session of the Legislature and they can study it and probably can adopt something on it.

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman. This amendment, Section 3, I think could be interpreted very well with the Section 2 of the Corporation Article that was passed yesterday. Therefore, I oppose it.

**CHAIRMAN GRAYBILL:** Is there any further discussion?
Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, I rise in support of this amendment. I think it varies enough from Section 2 regarding consumer protection, because this deals specifically with the public utilities.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President [Chairman]. I resist the substituted Section 3 for a very good reason—that it doesn't mention the utility involved, and any Public Service Commission in their rate hearings have got to represent both sides. If we have a provision in our Constitution which simply says that the Public Service Commission shall represent the utility—I mean, the customer—and at that—and stayed with that at all times, you would very soon have rates that were favorable to the customer but not the utility. And over the long period of time, that would be a very serious detriment to the public, because they would probably cut the rate so low they could not provide for replacements of needed equipment, and as a result the service would diminish. Now, I know all of you have in mind Montana Power, but there were other smaller companies that appeared before our committee. We had two very small telephone companies—one in Project and one at Hysham. They are very small concerns, and it seems to me that we should protect those people, too. And if you want to put something like this in here, it seems to me there should be something in there that said to respresent both sides, the customer and the utility.

**CHAIRMAN GRAYBILL:** Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman. Mr. Swanberg, I hope I live to see that day.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, the final clause of the proposed section says, "to obtain for them adequate service at just and reasonable rates". And as Mr. Swanberg well knows, no rates established by the Commission would stand in the courts unless they were indeed just and reasonable to the corporations.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, may I remind this delegation that yesterday or the day before, we took out of the article on Corporations the right to vote your stock (indistinguishable word), which is a great protection to minority stockholders. We took out the provision preventing the watering of stock—the corporate stock—we—and I admit I voted against the ombudsman proposition that came up here, and we have no place in this Constitution to do anything for the protection of the public or the consumer. We have an innocuous article in—we do have one article that the consumer shall be protected, but no way is it spelled out or specified. And in the average rate hearing I've been involved in—some rate hearings around the State of Montana—the consumer has no staff, he has no method, no way to prepare his case. He usually is—or whoever he hires—is dependent on contributions from a group of people; you never have adequate money to get the job done. And at least one place in the Constitution, we should have some provision for some protection for the consumer from rates that are unfair and unjust and unreasonable. I rise in support of Mr. Heliker's amendment.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Heliker's proposed amendment, styled Section 3 to replace Section 4, the first line of which is: "The Public Service Commission or other successor agency shall—". Is there further discussion?

Mr. Studer.

**DELEGATE STUDER:** Mr. President [Chairman], Mr. Heliker just said that they could be assured that the utilities would get just and reasonable rates. I would like to think that that meant just and reasonable to both sides.

**CHAIRMAN GRAYBILL:** Is there other discussion?

Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman, for all the delegates that want to leave this to the—these articles to the Legislature, maybe I should remind them that some of the testimony that we received in our committee hearing—that the Public Service Commission takes in around about $900,000 and their budget only runs $300,000. So I don't think the Legislature is taking care of the public utilities, and maybe this will be able to get them moving and get something to them.

**CHAIRMAN GRAYBILL:** Mr. Studer—or Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I just ask the members of this Convention to please stand fast for the majority report. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Heliker's motion to substitute Section—what's styled Section 3, Duty to represent customers, for withdrawn Section 4. The first line should read: "The Public Service Commission or other successor agency shall represent customers", et cetera. Do you want a roll call vote? All in favor vote Aye; all opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, I'm going to cast the ballot. Cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Absent |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |

| | |
|---|---|
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Absent |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. Chairman, 43 delegates have voted Aye, 44 have voted No.

**CHAIRMAN GRAYBILL:** 44 having voted No and 43 having voted Aye, that motion fails.

Mr. Heliker, what is your pleasure on Section 5? Do you want to withdraw the one in the book?

**DELEGATE HELIKER:** I will withdraw the Section 5, and I do not wish to introduce a substitute. I do wish to introduce a new section, if it's in order at this time. Do you have it up there?

**CHAIRMAN GRAYBILL:** Yes, I have it up here and I see no other motions in the regulation of Public Utilities District—or the Public Utility Article that matter, or should be ahead of it, and therefore I'll allow you to present what we'll style Section 6, so that we keep it separate. Will the clerk please read styled Section 6. And—just a moment. Has it been passed out? Yes; it's on Consumer Counsel. Has it been passed out? Please pass it out. Clerk will read it.

**CLERK SMITH:** "Section 6, Consumer Counsel. The Legislature shall provide by law for an Office of Consumer Counsel, which shall have the duty of representing consumer interests in hearings before the Public Service Commission. The Legislature shall provide by law for the funding of the Office of Consumer Counsel by a special tax on the net income or gross revenues of regulated companies. Signed: Heliker." Section 6, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, Mr. Heliker has an amendment—or has a new section, which we styled Section 6, to offer under the Regulation of Public Utilities Article, styled Consumer Counsel.

Mr. Heliker.

**DELEGATE HELIKER:** Can I wait until they're on the desks?

**CHAIRMAN GRAYBILL:** Does everybody have one?

**DELEGATE HELIKER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Since the last proposal was lost, the consumers have no one to represent them, and the object of this proposal is to mandate the Legislature to establish an Office of Consumer Counsel which would have the duty of representing consumer interests in hearings before the Public Service Commission, and to provide for the funding thereof by a special tax on the net income or gross revenues of the regulated companies. As you, I'm sure, are aware, in the past we have had ad hoc consumer organizations which have collected small amounts of money, something in the order, I think, of a maximum of $15,000 in one case. Where is it? May I have your indulgence while I see if I can find that Legislative Council report. It seems to have disappeared. I refer again to the December 1970 report of the subcommittee of the Legislative Council, which pointed out that in 1968, in one case, testimony submitted showed that a power company had spent $82,000 to pursue one of its rate cases, which would be more than one-third of the Commission's budget for that year. In another case the power company apparently spent $300,000 in preparation of one rate case, which was more than the entire yearly budget of the Railroad Commission. In the latter case, a Consumers' Council was organized—this was privately organized—set a hearing and was able to raise about $15,000 to pay three lawyers and an expert consultant to contest the request to increase the rates of the power company—$15,000 against $300,000 collected from you and me in our rates by the power company.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Harper.

**DELEGATE HARPER:** Would you accept the additional wording after "Public Service Commission", at the end of the first sentence, "or a successor agency", or need I make a move to have an amendment to that effect? Mr. Heliker says he accepts it.

**CHAIRMAN GRAYBILL:** Mr. Heliker, do I understand that you would like that—like Section 6 to be put in in that fashion, with the words "or any successor agency" added after "Public Service Commission" on the fourth line?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** Very well, all in favor of allowing Mr. Heliker to amend this section in that manner before he presents it, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered.
Mr. Ward.

**DELEGATE WARD:** Will Mr. Heliker yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Ward—Mr. Heliker?

**DELEGATE WARD:** Delegate Heliker—

**DELEGATE HELIKER:** Yes.

**DELEGATE WARD:** On the last line, on the special tax on the net or gross revenues of regulated companies, who do you think will eventually pay that tax, the company or the consumer?

**DELEGATE HELIKER:** I suppose the consumer will pay it, Mr. Ward, but he's paying it anyway—through the nose.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President [Chairman], I should like to rise in support of this amendment by Mr. Heliker. Over and over again this afternoon we've heard about these rate cases before the Public Service Commission, how extremely difficult and complicated they are, and when groups of people appear before the Commission they are never adequately prepared. We don't have anyone really protecting the consumer, and so I think if we have this Consumer Counsel to speak for the people, and even if this were passed on to the people as far as the cost is concerned, I'd be perfectly willing to pay it, to at least hear—have my side—that is, the public's side—adequately presented to the Public Service Commission. I support this amendment.

**CHAIRMAN GRAYBILL:** Mrs. Sullivan.

**DELEGATE SULLIVAN:** Mr. President [Chairman], would I be in order to offer an amendment? I want to strike—

**CHAIRMAN GRAYBILL:** Well, I'll certainly hear it.

**DELEGATE SULLIVAN:** —I want to strike a line.

**CHAIRMAN GRAYBILL:** Which line do you want to strike?

**DELEGATE SULLIVAN:** To put a period after "Counsel" in the second line from the bottom and strike the rest of that sentence, so it would read: "The Legislature shall provide by law for the funding of the Office of Consumer Counsel."

**CHAIRMAN GRAYBILL:** Mrs. Sullivan has an amendment which strikes the last half of the last sentence, so that she strikes the words: "by a special tax on the net income or gross revenues of regulated companies". She would put a period in there after "Consumer Council", so it says: "The Legislature shall provide by law for the funding of the Office of Consumer Counsel". We're discussing Mrs. Sullivan's amendment.

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I resist the amendment for the reason that we are more likely to get adequate funding by this method and for the reason that this is the method used in the State of Oregon successfully for 40 years to finance this regulatory agency.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** I rise at 7 o'clock to protest what I did at 9 o'clock this morning. I hate to see these amendments come in out of the walls and ceiling, not having been considered by our committee. They're just coming out of nowhere, and I don't think it's fair to a committee that was appointed by this Convention to have to suffer through an ordeal such as this. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. Chairman, I'd like to respond to Mr. Scanlin. I think that the substitute amendments that have been offered here—and sections—throughout the afternoon have been rather responsible and they've been well thought out. And I guess my impression or observation has been that they have been more responsible, really, than probably the majority of the committee. I think maybe the majority report is the one that's backward, and these motions have been the forward-looking and the more responsible courses of action to take.

**CHAIRMAN GRAYBILL:** Is there any other discussion of the Sullivan amendment? Except Mr.—

All right, Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President [Chairman], I reside—rise to maybe answer to the delegate from Cascade. Is he impugning our integrity that we don't know what we're doing? Is—

**CHAIRMAN GRAYBILL:** Mr. Mahoney, I'm sure that he meant the committee—that this is a minority report too. He didn't mean the Committee of the Whole, he meant the Public Health Committee.

**DELEGATE MAHONEY:** This is what I wondered, if he meant the majority of the Public Health Committee—

**CHAIRMAN GRAYBILL:** Yes, I see—okay—

**DELEGATE MAHONEY:** —didn't know what they were doing—

**CHAIRMAN GRAYBILL:** —I see; just so we have it straight.

**DELEGATE MAHONEY:** —I mean, this is what I wondered. I'm not going to get into—indulge in those kind of things. I never have, and I'm not going to do it now. I—this thing here—this committee—this study never—this one that we're voting on never came before the Committee of Public Health and Welfare. The first time I saw any of this was now, and I think that the Chairman—and he was presiding—should have presented this to the committee for our things. Now, personally I'm not opposed to a Consumer Counsel, but I want him into everything instead of just into utilities. I want him into everything if we're going to have that, and I think this is hastily drawn. And this, to me—it should be if there—if we're going to have Consumer—and if you want to put it in the Constitution, which I oppose, I think it should—this is straight legislative, and so I will have to oppose the Heliker amendment even with your—I think you have helped a lot, Mrs. Sullivan, but I still oppose it.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** I just want to keep the record straight, Mr. Chairman. Everything that has been presented to you this afternoon was discussed by the committee, except this last Consumer Counsel proposal, and that was discussed before the committee in hearing by Senator Metcalf, who recommended it.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mrs. Sullivan's amendment. All those in favor of Mrs. Sullivan's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and Mrs. Sullivan's amendment is defeated. Now the issue is on Mr. Heliker's proposal to add a Section 6 entitled "Consumer Counsel". It says—you have it before you—with the last sentence in except it does say "Public Service Commission or any successor agency". Do you want a roll call vote?

**DELEGATE HELIKER:** Yes.

**CHAIRMAN GRAYBILL:** A roll call vote is called for. All those in favor of it, vote Aye; all those opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Absent |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Nay |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Absent |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |

| | |
|---|---|
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. Chairman, 49 delegates have voted Aye, 38 have voted No.

**CHAIRMAN GRAYBILL:** 49 delegates having voted Aye and only 38 voting No, Section 6, as amended, is adopted.

Mr. Heliker, do I understand that you move that when this committee does arise and report, after having had under consideration Section 6 of the Regulation of Public Utilities Article, that we recommend the same be adopted? You so move?

**DELEGATE HELIKER:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well, all in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Now, ladies and gentlemen, if you'll turn to page 29, the clerk will please read the proposal on page 29, the minority report on public utility corporations.

**CLERK HANSON:** "Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Van Buskirk.

**DELEGATE VAN BUSKIRK:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration section on public utility corporations on Proposal Number 9, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Van Buskirk.

**DELEGATE VAN BUSKIRK:** I am on page 30. The minority believes that the people should have the right to choose the type of utility, publicly or privately owned, from which they will obtain the necessary services commonly called utilities. As Senator Metcalf pointed out in his testimony before this committee, Montana is the only mainland state without a single municipal electric system. The other state is Hawaii. This right is especially important in our state, where consumer protection against unreasonable and unjust exactions of privately owned monopoly utility corporations is inadequate, and where the Legislature has historically displayed no disposition to improve it. In our *Revised Codes of Montana* there is authorization for cities or towns for municipal utilities, and this is for water and gas only, but for electricity it is not clearly defined. Thirty-one local publicly owned electric systems have been created by voters in 14 states since 1960. Twenty-eight of them are municipal systems, two are bulk power systems, one is a county-owned retail electric utility. The reasons for this change-over were: first, lower rates; second, revenue from electric systems could be used to finance other city operations. Just as a community has the right to create a new local municipal owned utility, it has the right to do away with it and to contract with another utility to serve its people. At the present time, doubt exists as to the status of county and municipal ownership of utilities in the State of Montana. Constitutional provision is needed to clear this doubt, so there is a need for this general law. People have a right to select who should provide the services and should also have the right to establish their own publicly owned utility companies. As this is Delegate Proposal Number 121 by Paul Harlow, I would like to have him answer all the technical questions.

**CHAIRMAN GRAYBILL:** Mr. McKeon, you have an amendment on this on the desk here. Do you want us to read your amendment?

**DELEGATE McKEON:** Yes, would you read it, please, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, will the clerk please read Mr. McKeon's amendment.

**CLERK SMITH:** "Mr. Chairman. I move as a substitute motion, to delete the section on page 29 and to substitute in lieu thereof the following: 'There shall be'—'The Legislature shall provide for the organization and financing of public corporations for the maintenance and operation of utilities by municipal, county, or other geographical or political subdivisions.' Signed: McKeon."

**CHAIRMAN GRAYBILL:** Members of the body, so everyone keeps straight, the Chair has styled Mrs. Van Buskirk's section, Section 7. We haven't used that number yet. And Style and

Drafting can renumber it, but style it Section 7. And this is an amendment to Section 7 by replacing it with the language Mr. McKeon has just had read. Does everyone have it before them?

Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman, thank you. My proposal differs from the minority proposal in that I call for public utility districts; the minority proposal limits it to municipal and county districts. Mr. Chairman, I have done this for one salient reason. I think the people of the State of Montana deserve the right to choose how they will be serviced. I think it's been a long time coming, Mr. Chairman, and I think we can point our finger at just one company who has monopolized this state for so many years, and that's the Montana Power Company. The Montana Power Company, in my mind, has been totally irresponsible to anything that is good for the State of Montana; they've been totally selfish. I think, Mr. Chairman, that it's about time the Montana Power Company is afforded the opportunity to have some competition, and I submit that my proposal will give them that competition. Mr. Chairman, I'm sure every member of the Board of Directors of the Montana Power Company would argue that we need free enterprise. If they can argue that, Mr. Chairman, then I'm sure they can readily accept the concept of the public utility district as honest competition in their field. For this reason, Mr. Chairman, I had planned to discuss the merits of the PUD. Simply, I would say, I resent paying rates for my electricity when the Montana Power Company would use it to support the sales tax, would use it to support judges that I think are totally irresponsible to the wishes of the people, and support—And also, Mr. Chairman, I resent paying these fees when the Montana Power Company is so irresponsible as to buy such ridiculous luxuries as Learjets at the expense of the people of the State of Montana. Also, Mr. Chairman, I would—I should say that we have the irrigation districts, we have mosquito districts, water districts, and sewer districts; why can't we have electricity districts? I know of only one reason why we can't, and that's because the long arm of the Montana Power Company has stretched wide around this state and has coerced so many for so long in our Legislature into opposing any type of public utility district. The Montana Power Company used to use the argument that it's socialism. This was in the hysterical fifties; I assume they've abandoned that argument since. I might add that Saco is the only city in the state with a municipal gas supply, and I don't think they're carrying the thoughts and works of Chairman Mao around. Senator Metcalf made the point that Montana is the only state in mainland America that does not have municipal electrics. I think that it's about time we do have municipal electrics. I think it's about time the Montana Power Company had some competition. I think, most importantly, that the people of the State of Montana should be given the right to choose. And for this reason, Mr. Chairman, I would urge everyone at this Convention to support this proposal. Thank you.

**CHAIRMAN GRAYBILL:** Very well, Mr. McKeon's amendment is allowed and is open for discussion.

Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman, fellow delegates, along sometime today I had placed on your desks this little letter from me with some charts underneath it. I think they are very enlightening. This chart, as it's been indicated down before, is a relatively brand-new chart and was revised on the first of last year, in '71. And before I go into the full discussion of the embezzlement of the people of Montana in their utilities and their natural resources, I want to draw your attention to what has happened in electric rates in states where we have competition, in states where we have free enterprise. The chart is self-explanatory—on the bottom of it; the little round circles that are sort of grey-colored are privately owned utility areas; the ones that are black and round are publicly owned; and the diamond-shaped ones are cooperatives or your REAs. The first page deals with residential affairs and the second one with commercial service, so those of you who are in business can see how much money it's costing you to stay in business in Montana. I realize it is late, but you've—we've all endured the same amount, and this is very important to you, your business, and the keeping of people in Montana. Just a slight comparison, Missoula has $18.45 for a thousand kilowatts. You drop to Spokane, Washington, which uses Montana water power, it costs you eleven and a half for a thousand kilowatts of electricity. And you can move it around if you want to get where it's real cheap; go to Seattle, where you have a municipally owned utility, and you get your thousand kilowatts of electricity for $8.15. That's quite a little less than the $18.45 that you pay for this hundred kilowatts—or thousand kilowatts of electricity in all—in any of the cities served by Montana Power.

Now, the interesting facts here, also, is that up in Whitefish and Kalispell, an area that is served by the Pacific Power and Light, which has competition over in the other areas and realizes that they are making good money over in Idaho and Washington, they just haven't got the stamina—they just can't afford to—I mean, they just can't stand to charge the Montana residents in Whitefish and Kalispell $12.85. Now, the one little group that is quite interesting here, the one area which has public power—and I'm sure some of the residents—the delegates from that area will be up and talk rather strongly against public power—that it's socialism and so forth—the city of Polson, which is served by a public utility—or not—I mean, a public power area, buys their electricity for $7.00—or for $12.00; whereas Missoula and the rest of the Montana cities pay $18.45. Now some of you are going to—I will not go through that little chart any more, because it is self-explanatory; it shows you how much you are being charged in excess for what the cost of electricity is in other states in the Northwest. But I want to tell you a little of how the—our resources here in Montana have been embezzled. Not too many years ago, the government—or the Bureau of Reclamation—built Canyon Ferry Dam out here. It was built by your money, and the power companies maneuvered that so the city of Helena could not become a municipally owned utility and enjoy the cheap electricity available there. They also made it so it could not be transported by publicly owned transmission lines. So they cornered all that electricity at Canyon Ferry and bought it for a dump-rate price and are selling it to all of you—you in business, you on your residence—for anywhere from a thousand to ten thousand times more than what they paid for it. And some of you will say that this is legislation. I'll recall to you again that little remark I made here earlier, how we had the water in Montana protected by legislation in 1921 so that we thought we would have some protection for our water in Montana; but in 1951 they repealed that law, and we in Montana now are storing water without any compensation to be used by utilities in Idaho. They made the promise—I'll carry a little further on that—they made the promise to the local County Commissioners in Sanders County that they would pay taxes on the land that they were flooding at the same assessed valuation that they paid for it. That lasted 1 year, and now that land that they flooded and paid a fair price for is being taxed at a price—at a taxable valuation of wasteland, sort of industrial land—a very small fraction of what they paid for it. Then, a few years—or right after that dam was built in Cabinet, Idaho, the utilities, Washington Water Power, came in and built the Noxon Dam. They strongly opposed that dam being built by the Army Engineers or the Reclamation project. That dam at Noxon produces almost as much electricity as all the other hydroelectric dams in Montana. All of that electricity goes out of Montana. It all goes into Idaho and Washington, and it goes into Washington and is sold in Spokane for eleven dollars and a half for a thousand kilowatts; whereas the other hydroelectric power developed in Montana sells at Missoula, Great Falls and Billings for $18.45. We had a law, and do have a law, on the books which is supposed to tax the electricity generated in Montana. It has the little catch on that law that this electricity will be taxed only if it is sold in Montana. Well, this electricity is not sold in Montana, so that 400,000 kilowatt capacity at the Noxon Rapids Dam goes out of the state and all that Montana receives for it is a little bit of property tax that is paid into Sanders County. The state itself receives only the two-mill levy that's levied down there occasionally off of that giant hydroelectric plant there at Noxon Rapids Dam. We may use the argument that this public utility district type of thing is socialism; it's not right. I would merely bring to the attention of all of you the various places in Montana—out of Billings, out of Lewistown, out of Great Falls, out of Missoula—where the Montana Power Company came into the REAs, the people's cooperatives, which they had a little load that was growing in their territory which was going to be used to sort of support them and make them progress and make them so they had a little money—the Montana Power moved in and took it away from them.

**CHAIRMAN GRAYBILL:** You have 1 minute left on your 10 minutes.

**DELEGATE HARLOW:** Thank you. So in this 1 minute that I have left, I want to bring to your attention again that unless you put some kind of a thing in the Constitution that the Legislature can't repeal, you, the people of Montana, who are paying all of this extra money into Montana Power's coffers, then going to New York, will continue to pay this exorbitant price. Think about it before you vote. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. McKeon's substitute motion to put his language in Section 7 in place of Section 7 as proposed in the minority report.

Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman, I'd like to—I wonder if Mr. McKeon would yield.

**CHAIRMAN GRAYBILL:** Mr. McKeon?

**DELEGATE McKEON:** I yield.

**DELEGATE GYSLER:** Mike, don't the cities vote every so often on giving a contract to a utility for a certain number of years?

**DELEGATE McKEON:** Electric utilities?

**DELEGATE GYSLER:** Right.

**DELEGATE McKEON:** I'll yield to Mr. Harlow on this question.

**DELEGATE HARLOW:** Yes, they do. They have no other alternative. They are given a charter to serve the city with electricity, but they can't take it over themselves because they've got—the law won't allow it.

**DELEGATE GYSLER:** Mr. Davis, would you like to answer that question, too?

**CHAIRMAN GRAYBILL:** Mr. Davis?

**DELEGATE DAVIS:** As I understand the law, under our present statutory law the cities don't have any choice. You can't—the REAs can't serve within the city; they can't even serve residential within the city unless it's over—what, 3500?—if it's under 3500 people.

**DELEGATE GYSLER:** The point I wanted to bring out is that I believe we had one of these elections in Fort Benton just a few years ago—and some of you people can correct me if you want to—but I believe that term is for 50 years. Now, I'm sure that there's probably at least 40 years to run on that, so I just wanted to make that point that passing something like this isn't, right off the bat, isn't going to open up every city in the town—in the state to this type of a district. Another thing that I would like to point out is that with this Consumer Counsel that was just established, there will probably be a whale of a lot better ratemaking system, because there is going to be a lot more rate feed-in, if anything can possibly do it. The third point that I wanted to bring out, and I think we all should recognize, is that if we make a public utility district, then we have taken away a pretty fair tax base. Now, sure, we pay that tax through our utility rate, but I just want this body to remember that when you remove the utility and you think about a lower rate, you've also removed the tax structure that goes along with it.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROBERT HANSON:** Mr. Chairman, I'd like to speak in opposition to Mr. McKeon's substitute motion. I happen to live up in Lake County, and Montana Power doesn't sell any electrical energy up there to the residents. And they—I think in the last year they paid over $535,000 in property tax for our schools and the operation of the county government, which is about one-third of all the taxes paid by all the people in Lake County. And if we would lose this $535—or $535,000, I'm sure that we would all have to pay about twice as much individual property tax, so therefore I resist this amendment.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President [Chairman], can I talk after Mr. Hanson? I would like to just have one of the attorneys correct, I think, the wrong impression that may have been given to answer—in answer to Mr. Gysler's question. I believe that in Montana the cities grant the use of the roads and alleys and this type of thing for utilities for a period of time, and I don't believe 50 years. I think it's about 20 or—and this, I believe, is only for gas and perhaps water. But I'm quite sure that in Montana—and I wish some attorney that knows this law would correct me if I'm wrong—but I believe in Montana there isn't any such thing required for electric utilities—not to my knowledge. Now, I might say that I hadn't intended to get up and speak on this issue because I probably do have a special interest, being a manager of a rural electric cooperative. But I would like to have that clear.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, the franchises are granted by the city councils, and they are for various terms of years according to the way they're negotiated. I know that's the way it is in Hamilton.

**CHAIRMAN GRAYBILL:** Members of the body, I don't see any attorneys rising. It's my understanding that all franchises of this nature in Montana are nonexclusive.

Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I think Mr. Gysler hit on a terrific point. We have just passed, in this body—now that we're going to statewide property tax, we're going to have statewide levies, we're going to have big bonded indebtedness. Now, if one community or one county should go a PUD—and I think that's probably what they would have—then not the loan but the state would lose—under the schools and that. Now, Mr. Gysler said they would have cheaper electricity, but what about the county taxes? What about the school tax? What about the other—we're going to statewide levies. We would just give the groups that organized this a beautiful subsidy. They would have no problem of paying any taxes unless we changed it. Maybe the Legislature would, but this could be a very tough thing. Now, I think, furthermore, I certainly agree with Mr. Harlow. I'm one of the four in the Senate of the State of Montana that voted against the Cabinet Gorge bill. I want that understood. There was only four of us; all the rest of them went. It's the only place in the journal, in any journal, where the Governor has sent a message to the Legislature telling them why he signed the bill. And this was Governor Bonner, so I want that—there's no other place in any other journal that the Governor has ever sent a message and said why he signed a bill. The vetoes have always made it, but this was done. Now, let's go out here a little bit further. This is going to be a little difficult. First, you've got to have power, if it's going to be electricity; you're going to have to have natural gas, if it's going to be natural gas. Now, Saco was mentioned. They're right in the middle of a gasfield; this is the reason. This is a very small—and only part of the town is in—handled by this municipal. I have no objections. Get this a little further; in 1953, I think it was, there was a bill put—introduced and passed both houses of the Legislature, of which I fought very hard against, which was repealing the right to issue revenue bonds for to have electrical and natural gas. I opposed that. And those cities came in—nobody came in to help me at all. I knew what it was doing, and I opposed it, and it was—the bill passed and was signed by the Governor—Aronson, at the time. The scheme was, at that time, that says, "we've just got a wasted law here, and if we're going to remove from the books a law that is no good"—now, this—if this law was reenacted, you could then pass revenue bonds to go into municipal systems and you wouldn't have a property tax or a utility tax on all property. If we go under this system of public utility districts, this is where we will probably go countywide. This will mean that they should—and maybe they won't—will buy out whatever utility is operating within that county. Montana Power Company, Pacific Power and Light, or Montana-Dakota Utilities. Those are the three that operate in this state. Now, providing they bought—and I look here, right out here—then they're going to have to buy powerplants. Now, if they buy powerplants, what's going to happen to the other county alongside where this powerplant is not in that county? Now, if this body wants to go to public utility districts, I think—and I might be wrong—that the only way we can go is in this big integrated system; is to go to the Nebraska system, that we purchase the whole area of the Montana Power Company or to purchase the whole part of the Montana-Dakota Utilities in their area, or Pacific Power and Light. We'll take, for instance at Billings—we'll just use Billings—they would now, if they purchased the steamplants, they would be fine there. But what would some of the other surrounding counties that are there—now are they going to then be at the mercy of a power organization in Yellowstone County, where there is no power? Now, I think, furthermore—that I think you've got to realize that every bit of the power in the Bonneville system is allocated until there is—that is, firm power—until there is new dams get on the line. Maybe you could get some out of Libby. Now, in eastern Montana, the cooperatives are all going to North Dakota, because there is no more power available on firm basis. Now, in answer to Mr. Harlow out here—in regard to this dam out here, and I've been just as disgusted with it and just as mad as anybody. This power has now all been allocated, Mr. Harlow, after they closed the bus at Fort Peck. Now, this power can flow all down into the State of Nebraska, the State of Iowa, the State of Minnesota, and North and South Dakota. There's no power available in firm power, and that's the only thing rural electric cooperatives—the only thing PUDs can purchase, because firm power is every hour of the clock you have to have it. Now, this is what I think you're getting into is to this thing here now. When you say "The Legislature shall provide", I want you to realize that we can't let one county go, because then he's going to get out of taxes on schools under the new things—statewide levies—and I would hesitate to see then some other counties placed in that. So it's going to have to be in large areas, and the one thing is to come out and put the State of Montana to take over all the power of the Montana Power Company or all the natural gas of them, because distribution is the problem, and getting it there. And I hope you know—take it—and Mr. Chairman, I therefore oppose the resolution.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** I just might want to point out one thing about this thing. It says that "The Legislature shall provide for the organization and financing of the public corporations." Now, it really doesn't mean a thing, and we're back to legislation again that gives our intent that doesn't do any good. Actually, the Legislature, in the financing of such a public corporation, could set up the financing structure so it would be impossible to do a proper financing job so that a corporation could even get off the ground. And, therefore, it's still legislation. I can give you another example of that on banks in Montana. We have a statute on various banks in Montana as to how they're set up. We have a Morris plan bank that isn't practical in this time, so nobody sets one up. We have a savings bank that nobody sets one up because it just isn't practical, and the Legislature can very well set up the financing of a public utility district that would be practically impractical. They could say that the bonds would have to be paid off in 5 years if they want to. Therefore, this is purely legislation, and I again would resist the amendment and ask you to vote it down.

**CHAIRMAN GRAYBILL:** Well, Mr. Swanberg's still up. Mr. Harper is coming up.

**DELEGATE SWANBERG:** Mr. Chairman, as a member of the majority of the Public Health, Welfare, Labor and Industry Committee, I stand to oppose both of these proposals. I might say at the beginning—and I'll have to speak just a few minutes here—we have here another very complex subject, and your committee gave very little time to it. It somehow sort of tagged along with the Public Utility Proposal as a whole, and there just wasn't time to get to it. I would like to—briefly just to go to the heart of the matter here and submit for your consideration that the record of public utility districts in Montana, and I should say the United States, has not been too impressive in recent years. Very quickly, I'll take you back to 1920, and at that time there were 3,046 public utility districts in the United States. This number, from that point on, shrank. And we must remember that in 1920 electricity was not all that generally available. Small communities throughout the United States did not have electric power—the larger utilities had not got out to them—and the public utility district concept at that time was a valid idea. Small towns could buy whatever the equipment was needed, set up their electric plant and have electric lights. But from that point on—1920, there were 3000 districts. In 1925, only 5 years later, there were only 2000; and then from that point on—in 1935, there were a hundred and sixty-seven districts created, 59 abandoned; 1940, a hundred and nineteen created and 40 abandoned; and then in 1945, there was only 54 districts created and 96 were abandoned; in 1950, 26 were created and 45 abandoned; in 1955, 10 were created and 42 were abandoned; and so on down the line—I won't give you every year. The point is clear. In 1964, only 3 districts were created and 5 were abandoned; in 1969, only 2 were created and 8 were abandoned. And at the present time there are 1,923 districts still operating in this country. Who are these districts sold to? Let me briefly go down the list—I won't bore you with too many details here—but they were sold to the very people, the very kind of people that now run our public utility system in Montana. Hayworth, Illinois, was sold out to Central Illinois Electric Gas Company; Crowdersville, Indiana—Public Service Company of Indiana; Grimes, Iowa—Iowa Power and Light; Williams, Arizona—Arizona Public Service Company; Hopedale, Illinois—Central Illinois Light Company; Milo, Iowa—Iowa Power and Light; and so on. In other words, it would appear from this record that the customers of these small public utility districts, for one reason or another, found that it was to their advantage to sell out their public utility district and join with a private utility. I'm not through yet, Miles. We also have on the books, fellow delegates, three statutes that deal with the establishment of public utility districts. We have, of course, a statute allowing cities and towns to set up water supplies, and that is a public utility district. We have a statute on the books that allows cities and towns to set up lighting plants; that would be a public utility district. And finally, we have a statute, quite detailed, that allows cities and towns to set up gasworks and gas supplies, and I will read that statute to you just briefly. It says the city or town council has the power to contract an indebtedness of a city or town upon the credit thereof, of borrowing money and so on, for the purpose of purchasing or developing an adequate supply of natural gas, and to construct or purchase a system of gaslines for the distribution thereof to the inhabitants of said city or town or vicinity. Now, I bring that up because there is a public utility district statute right now on the books in Montana. It's not being used. We have cities and towns in this state, situated right in the middle of gasfields, and they're not taking advantage of this statute. Why isn't Shelby using this? Why isn't Cut Bank using this? Why is only one town in the State of Montana, Saco, which is half public and half private? There must be a reason for this. The matter of taxation has already been covered. I wish to remind you that if the private property of a public utility like Montana Power is taken over by a public utility district, the property goes off the tax rolls and your private taxes are correspondingly increased. The comparison I want to make again is not too germane here, but it does have a point. Now, we have 40 private water companies in the State of Montana, and 122 municipal companies. The records of the Public Service Commission will show that the 212 municipal companies have been before the Public Service Commission an average of 1.73 times since 1945 to ask for rate increases and the 40 private companies have been before the Public Service Commission an average of .57 times, which would indicate to some extent that the privately operated water companies of this state are far more efficient than the publicly owned utilities. Now, one more point now. You have a chart before you which has to do with public utility districts in the State of Washington and Oregon and your—it has been suggested to you to compare the rates between these two places. Let me remind you, fellow delegates, that the density of population in Washington and Oregon is far greater than it is in Montana. The density of the population of Oregon is 18 per square mile. The density of the population of Washington is 42 per square mile. The density of Montana for population is 6 per square mile. And it shouldn't take too much guesswork to realize that this has a very big bearing on the amount of power cost you're going to pay. It costs the same to string a mile of wire whether you serve 50 customers or whether you serve 1, and this is one of the reasons that the rates in those areas are somewhat lower than they are here. Point two: heating is used extensively in these two states for heating homes—they use electricity extensively for heating, and since they have all this extra power demand at their disposal, they can charge a lower rate. We don't use heating—we don't use electricity for heating in Montana, and that makes a difference. Now, these are just a few of the things to point out to you how technical this subject is. I think that it's statutory, and I certainly would not recommend a snap judgment in putting it into this Constitution. Thank you.

**CHAIRMAN GRAYBILL:** We'll stand at ease while the tape is changed. The Committee will be in session.

Mr. Harper.

**DELEGATE HARPER:** Well now, friends, I think some of us little citizens could just get talked right out of here, and we can. I don't have a brief, as apparently some people came prepared to discuss this, all right, but just as a citizen, I'm kind of interested that this—evidently this thing hits a nerve somewhere, it gets such a reaction. I read it, and I don't see why it should get all that reaction. It must be possible to have public utilities, although the last few speeches have just about convinced me that it's absolutely impossible to do it. And yet every other state in the Union has it, except the State of Montana. I grew up in a place where they had public utility, and they still have public utility there. Now, it's true it's a larger town, but I have in the back of my mind, as we write this Constitution, that the towns and cities in Montana are going to grow someday. This—there's nothing in this thing, as I see it, in this new Section 7, that says any of this is mandatory. There's no—no town is going to be forced, no county, no agency is going to be forced to run in a public utility district, and if the profits don't exceed the taxes—I want to make this point because several people have risen to say that the taxes that we get from Montana Power, for example, and from other companies probably will far exceed any profits that could be made on it. To me, just as a layman who knows very little about it, it's a very poor business they're running if their profits don't exceed the taxes they're paying. Now, I have an idea that if the city of Helena were going to consider setting up a public utility system sometime and if, in preparing for it, we discovered that it would not be profitable, that we'd lose more in taxes than we'd gain in profits, I doubt if our City Council and the people here would ever vote to do it. It's been suggested that there really is no power left, that it's all been allocated. And my reaction to that is, if there's no power left, then we couldn't possibly run a public utility. So I really don't see what the big deal is. This makes it possible at some time in the future for this to be done; and if it is not possible, and if nobody ever finds it profitable, and if we're getting better service otherwise, I don't see how it could be any threat to anybody. So I'm not quite sure. I guess I just don't understand, maybe, everything that's down and under here. I don't quite see how this hit the nerve that apparently it did.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Well, I, too, am

just a little bit—I just can't quite understand this. I was born in the country, and I still live in the country; I probably will die there. I wonder if Mr. Mahoney will yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Mahoney, would you yield to a question?

**DELEGATE MAHONEY:** I'll try, Mr. Chairman.

**DELEGATE AASHEIM:** Well, Mr. Mahoney, now, when I turn the spigot on and I get some water in this city of Helena, I understand that the city of Helena owns that water system, and it seems to be operating pretty efficiently. Why is it so bad to have an electric plant—or to sell electricity at the same time?

**DELEGATE MAHONEY:** Only thing that I've got to say in answer to that is, you've got—they've got to have—they went out here to get the water and gradually, over a long time, they bought the water. And right now they just passed a whole bunch of bonds last year again for the water, and this is what you'll have with the electricity. Now, here's what you're doing. Don't forget the taxes. This is what you're doing. You're going out here—if you're going to the statewide property tax, this became much more serious. That's all I have.

**DELEGATE AASHEIM:** Will he yield—

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Will he yield to one more question?

**DELEGATE MAHONEY:** I'll try.

**DELEGATE AASHEIM:** I'm still from the country, and I just don't quite understand this. Now, is somebody losing money furnishing electricity to this town?

**DELEGATE MAHONEY:** Absolutely not.

**DELEGATE AASHEIM:** Will you yield to another question?

**CHAIRMAN GRAYBILL:** Another question, Mr. Mahoney?

**DELEGATE MAHONEY:** I'll try, Mr. Chairman.

**DELEGATE AASHEIM:** Well, if the present utility is making money, would it be possible for the city to make some money on this electricity?

**DELEGATE MAHONEY:** Why, certainly. Certainly. I'm not saying they wouldn't.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Thank you, Mr. Mahoney. I'm still confused, and I suppose it's getting late—that's probably one of the reasons—but I just can't quite—

**CHAIRMAN GRAYBILL:** Mr. Aasheim, it's not late yet. Don't worry. (Laughter)

**DELEGATE AASHEIM:** But I think that's the reason for my confusion. But I have driven through Iowa, and Iowa is something like Nebraska—it's kind of conservative—and yet I see smoke coming up in these towns in Iowa, with little rings around, you know, and I inquire what's going on here; how come these plants are operating here in Iowa? And they tell me the city owns the powerplant. Now, I can't understand why it's good in Iowa, why it's so bad in Montana. Mr. McKeon, will he yield to a question?

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** (Inaudible)

**DELEGATE AASHEIM:** I think you have a good plan here, but will you tell me again, what is better about yours than over the original?

**DELEGATE McKEON:** I—the original one submitted by Mrs. Van Buskirk just provides for counties or cities, as I understand it. Mine provides for districts, so that perhaps one county could band together with another county for a public utility district, instead of just that one county having the district.

**DELEGATE AASHEIM:** Thank you, Mr. McKeon. Needless to say that, in all this confusion, in my fuzziness, I still think either plan sounds pretty good.

**CHAIRMAN GRAYBILL:** Mr. Romney, you've been up for a long time. Would you like to speak?

**DELEGATE ROMNEY:** Yes, sir. Mr. Chairman, I want to support either the McKeon or the minority plan. I think they're both good. We'll talk first a little bit about the McKeon plan. It is based on public utility districts in Washington and Oregon, which have proved singularly successful. However, there's a lot of talk about financing them. Well, out in Washington they organize these districts, they sell bonds, and just like the Montana Power Company or the Montana-Dakota Utilities or any other private utility does. They sell bonds, and then they—by rates they eventually pay those bonds off. And in Washington and Oregon they pay tax—pay funds in lieu of taxes, and so that's taken care of. And the city of Seattle, where they have city light, they do the same thing. There's no magic in this that the power companies—private power utilities have that the PUDs or the cities cannot also use, and they have used them in other places and they are using them in other places, and they gradually are paying these things off. As I believe Delegate Mahoney spoke about Nebraska, they have statewide power in Nebraska. Two, 3 years ago the province of British Columbia bought out all of the private utilities, I think, in the province of British Columbia and is running them at a profit and gradually will pay them off; have the whole thing and gradually will be able to use the funds derived from the sale of the property—the electrical energy—for building sewers, parks, whatever—zoos, whatever you want. And there's no magic in this. There's no reason why it can't be done in Montana. There probably is some validity in Delegate Mahoney's argument that we might have to take over large districts in order to do it, but it would be a pretty good thing. Talking about the bonds, I recall in a hearing that I attended in Billings of the Montana-Dakota Utilities when they were seeking rate increases, the chief thing that they were asking rate increases for, if my recollection is right and I'm sure it is, was the excessive rate of interest that they were having to pay on new bond issues they were floating to pay off bond issues which were maturing. That's the history all over. That's the history of it in the Montana Power case. They are in the grips of this inflationary movement and they're having to pay more—a higher rate of interest on the new bonds that they're floating in order to take up for the old ones as they come due. And the same thing would happen in the operation and—of PUDs or municipalities if they should happen to be brought into being in the Treasure State. Now, I wish to also address myself to the nationwide recapitulation made by the delegate from Cascade, showing a decrease in the number of public utility districts. My friends, those are not public utility districts. Those were municipal operations. The only PUDs are been—practically are out in Oregon and Washington, and they have not been decreasing in number.

**CHAIRMAN GRAYBILL:** Mr. Siderius.

**DELEGATE SIDERIUS:** Mr. Chairman, I think this would be a great thing for the State of Montana. Look at all the money we would save here instead of sending it back to New Jersey to the stockholders of the Montana Power Company. I think this is tremendous.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman, maybe I could elaborate a little bit on George's—Mr. Harper's statement that he hit a nerve. I, too, hit a nerve, George, when Mr. O'Connor appeared before our committee. He stated that the Montana Power Company paid a total of $10,474,000 in taxes to these entities, meaning the state. The revenue would be lost forever if that system was taken over. This revenue will have to be made up by some other source, and there is only one other source and that's the taxpayer. Now, how can you tell me that you wouldn't make money on this, like you? And I asked him that. And he said—he hit the nerve on me, too—he said, "Well, Mr. McCarvel, how would you like to pay double school taxes". I says, "I already am. My children all go to private schools, so," I says, "I have no problem there, Mr. O'Connor." But he got mad at me, and he did send a little apology for the way he treated me.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Mr. President, would Mr. McKeon yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. McKeon?

**DELEGATE McKEON:** I yield.

**DELEGATE SKARI:** Mike, in your motion here, is this a mandate to the Legislature to do this, or does this leave an option open for each municipality or district?

**DELEGATE McKEON:** The intent of this section was to leave the option open to the district; however, this does provide the skeleton for the machinery which should—could be implemented if the option is accepted by the district.

**DELEGATE SKARI:** May I ask another question, Mr. President [Chairman]?

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Then each, any, or no district, if it chose, or any municipality could refuse to do this? It would be up to them?

**DELEGATE McKEON:** Certainly. It's a matter of the right to choose. I think that's the essence of the proposal that's before us now. It just gives the district the right to choose. And we're not mandating or compelling anyone to have a public utility district, and perhaps no one will have it; but if somebody does want it, it's there for this district to have.

**DELEGATE SKARI:** Thank you.
Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** I think that local public power systems are alive and well in this country, and they are big business. I think the assets presently exceed $10 billion in public power. I think there are a great many benefits. For example, there are no stockholders. Every dollar of revenue over cost remains in the community, either in lower rates or to offset the increased taxes. I would also submit that the decisions remain at home, too. I think it's a trend away from big business, and I think that's something the country is looking at. And the cost has also proven to be lower. In public power, the average user, residential consumer, in this country used 8,546 kilowatt hours in 1969, at a total cost of a hundred and twenty-three dollars and ninety cents. In private power, each residential consumer used on an average 6,246 kilowatts at a cost of a hundred and thirty-nine dollars and seventy-seven cents. In other words, about a third more power at about eleven and a half percent less cost. The public power cost a dollar and forty-five cents per kilowatt hour; private, two-point-two-one. These are Federal Power Commission statistics. Now, we could ask, why are they lower? For one reason, they are nonprofit—no dividends or federal income tax is paid on this. Public power systems do pay as much in state and local taxes, however, as private power. Now, I would throw this out if someone would question this. This is according to my research. Revenue bonds to finance capital expansion in public power are tax-free, and therefore the interest rates are lower. And it has been shown that these public power systems, local systems, are more efficient in their management. They handle their accounting, their collections, promotion, advertising, administrative and general managerial expenses more economically than the larger private power companies. There are many local contributions from these, too. The lower rates help to offset other costs of government. Often, street lighting is provided at no cost to the city treasury. They often light athletic fields, parks, and other public facilities. I point out that Jacksonville, Florida, has invested $50 million in a new coliseum, auditorium, city hall and street and sewer improvements, and most of this money has been paid for out of the profit from their electric system. Hamilton and Norwalk, Ohio, recently built new city halls; most of the cost paid for by electric company earnings—municipal power. Has the cost of service going—gone up? No. As I indicated, in almost every case these benefits have been provided while the electric rates continued to be lower than those of neighboring private utilities. There is also local industry, local payroll, the purchases are made locally; and here again, we have local control. I think there's tremendous pride in ownership in these cities. I would also mention, too, that when you have this local control, you can pay very careful attention to environmental control in the areas, too. Many of these cities are putting these systems underground because local—because of the local response to this. I think we should allow the option here. Montana is the only—Montana and Hawaii are the only states without this option. I don't know if it would be widely used, but I would like to see it available. I think it also would probably be a fair yardstick at the cost of power distribution in this state. Thank you, Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, I rise in opposition to this amendment, and I'm going to stay with the majority proposal. I lived in Washington for about 4 years, and I might relate that we had a property tax. I owned a house while going to school there. We had some trouble with the public utility districts, and I might state that they have about a five and a half to six percent sales tax at the present time.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President [Chairman], I'd have to agree with Mr. Aasheim. I'm from the boondocks, too; I'm getting a little fuzzy. But I can remember when we had a public utility in the little town that I lived in, and we had a 1-horse diesel engine, and we had the one light bulb hanging from the ceiling. And I'm just afraid if you keep monkeying around here, we might go back to that. And also, if you try to buy out Montana Power or some of these others, you're probably going to tax my ranch so much that I can't afford to own it. Thank you, Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I would like to give the committee just one small hint as to why it might be profitable for the people to organize their own power company if they're in the territory of the Montana Power Company. My research analyst and I have been doing a little quick figuring. You know, when the Montana Power Company was organized in 1913, there was incorporated into its capitalization about $20 million in water, and this went into the rate base and was so found in 1944 by the Federal Power Commission and for federal purpose was ordered out of the rate base, but the Montana Public Service Commission kept it. Well, now, the little figuring we did was, what is the present value of that income stream—$1.2 million a year that the Montana Power rate payers have been paying in overcharge for 59 years? It figures out to $679 million. In other words, if the rate payers could have kept that $1.2 million every year and invested it at 6 percent, they could have bought the Montana Power Company in 1972 twice over.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** Mr. Chairman. It's late, and I'm kind of a country boy myself, but I knew this was coming up and I called and got some figures on the thing, and I'm delighted that Mr. Heliker—Delegate Heliker—has brought this situation up. I got a note from Mae Nan a little bit ago, and she said, "How about hearing from a capitalist?" Well, I hope I am not looked upon as being one of those, but I do know something about publicly held companies, Dr. Heliker, and if it's that good a deal, I think we all better go buy some stock. But I asked a broker what the Montana Power Company stock was selling for, oh, 5, 6 years ago. It was selling for about $45.38 a share at its high mark. And in today's paper it's about twenty-nine and a half, if you've checked it. And I think the high for this year was $34, and the low was something like 26. Now, for those of you who may not understand the private enterprise system here in America, everyone has the opportunity to buy stock in a publicly held company. A publicly held company is regulated pretty much by the SEC, the Security Exchange Commission.

**CHAIRMAN GRAYBILL:** Mr. Drum, I don't want to be picking on you, but I really don't see how an explanation of the capital structure of a privately held company has—what that has to do with whether or not we should also have the other. Now, I don't want to be too tough, but I think you really ought to stay on the subject, which is whether or not we should have the language that he puts in Section 7.

**DELEGATE DRUM:** Don't get—thank you, Mr. Chairman, for the reminder. It reminds me of the story that Ralph Studer might tell—fiddle with the bull and you get a horn in the fanny. (Laughter)

**CHAIRMAN GRAYBILL:** Consider yourself gored, Mr. Drum. (Laughter)

**DELEGATE DRUM:** Surprise. My point, Mr. Chairman, I would like to come to is that I—really, I don't own any stock in the power company. The only thing I ever hear from them is I get a bill once a month from them. I do an awful lot of business with a bunch of cooperatives. I've got a bunch of feedlots around, and we buy a lot of power, and we get along fine. I get along fine with the power company. I'm not one of their guys, but I do recognize that their position in private enterprise has become a whipping-dog for many who would like to run for office—one who holds an office in Washington. We've heard from many politicians, and the facts are not really clearly presented to you delegates here. You hear these twenty-three and a half percent return on power sales, and this and that and the other. What I am saying is that if this is true, the investors in America would be out here in droves buying that stock. They would come from New Jersey, they would come from everywhere else, to buy Montana Power stock. I submit to you that it's not that big a deal. I don't think they're making as much money as has been presented here on the floor today. I don't think it is as good a deal as a lot of people seem to think it is for a community to get into the power business. Now, not too long ago—and I would like to deviate a little bit, if you will permit me, Mr. Chairman—

**CHAIRMAN GRAYBILL:** I'll watch you. Go ahead.

**DELEGATE DRUM:** I was one of the ones who promoted—or foisted on the citizens of Yellowstone County a community center, a la Jacksonville, Florida. Now, the power company, I will admit, was not one of our supporters. They didn't bump it, but they sure as the devil didn't support it. But now that it has passed the electorate, I'll tell you, they're going to support it to the extent of about 9 percent of the cost of that thing, because they pay about 9 percent of the taxes in Yellowstone County. They support the schools 9 percent; they support the courthouse 9 percent. And in our county, we have 10 percent of the taxes come from agriculture, 40 percent come from the homeowners, and 50 percent from industry. Almost 10 percent of that is coming from the power company. So when you say that this—all profit is going to New Jersey, it is supporting things like community centers and schools in our county. Now, I asked for some details on the taxes that were paid in various counties. Yellowstone, we get about $900,000 out of them down there; Cascade, you get about a million three hundred; Missoula, about $643,000; in Lewis and Clark it's something like 748,000; Gallatin and Lake Counties are around 500,000. Well, when you talk very loosely about let's go set up a public utility, you are talking about leaving a cavity or a gap in your capital structure of your community. You may foul up your bond schedule, and you may lay some taxes on someone else who are the taxpayers in the area. So what I'm saying is—not that I am a big power company man and I'm not a PUD man, but let's get the record straight here. It may not be as good a deal as you have heard today from some of the bumpers of private enterprise. It is a consideration that should, I think, be in the hands of the Legislature. I think if it is as good a deal as it has been portrayed as being, I think the Legislature at some point will open their arms, put it in the statutes, and go from there. Thank you very much, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. McKeon's motion that we substitute a Section 7 that says: "The Legislature shall provide for the organization and financing of public corporations for the maintenance and operation of utilities by municipal, county, or other geographical or political subdivisions".

**UNIDENTIFIED DELEGATES:** Question.

**CHAIRMAN GRAYBILL:** No, I'm not interested in question, but I wish those that aren't intending to speak would sit down so I can find out who's up.

Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I'd like to explain my vote. In the interests of fair play, I signed the minority report, but I'm not voting that way.

**CHAIRMAN GRAYBILL:** Now, all of you that are up now have been up before. Is there anyone that hasn't been up that would like to get into the act?

Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, I was glad to hear Mr. Drum come out with a talk like that. I think I can add just a little bit here. We all point our finger at these people and we point how much they're making, and we have politicians in Washington that get in the act. I saw this happen with the sugar farmers down in Big Horn Valley. They were mad at the sugar companies. The sugar companies were robbing them. They was going to build a plant of their own. They was going to do all these things. They had their Congressman working for them. Sugar company shut the plant down, and boy, what I mean, they've been scrambling ever since, too. Their Congressman has been scrambling. He can't do anything. Farmers haven't got any plant now, but they sure do miss that tax base and that sugar check every fall, I'll tell you. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President [Chairman], just one brief statement or question, or however you want to call it. I wonder who really pays the taxes Montana boasts about? Isn't it the people that use the electricity down in the towns and little communities all over? I think that's who pays the taxes that you see advertised in the papers that Montana Power pays, and MDU pays, and so on. It's just the users themselves; it isn't the company.

**CHAIRMAN GRAYBILL:** Mr. Siderius.

**DELEGATE SIDERIUS:** He answered my question.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President [Chairman], it was stated a few moments ago that we had touched a sensitive nerve here, and I don't know whether it was meant for Mr. Mahoney or for myself. We've been the principal speakers on this on behalf of the majority report, but I would like to state for the record, and it might have some effect on the vote, that I do not represent any public utility. I am not in their employ. I have never represented a public utility as a lawyer. I've never appeared before the Public Service Commission in a private capacity, although I have for the city of Great Falls. And I appear here as a delegate to the Constitutional Convention. My sole interest is to write as good a constitution as, in my opinion, we can; and it's my opinion that this matter is legislative. It's my opinion that it is dangerous. And I respectfully urge all of you to very carefully consider the fact that you're dealing with a very technical subject on very inadequate consideration, and I respectfully urge that you delete both of these proposals.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I am receiving electric service from a private utility, and I am very well satisfied with it, and I hope to continue receiving service from this private utility. But I feel that it is the right of any community to make its choice of service. I would like to retract a statement I made awhile ago. I prefer the terminology in the minority report. Consequently, I shall move to delete the McKeon recommendation and in favor of Section 7 as it's in the minority report.

**CHAIRMAN GRAYBILL:** You're moving to strike—Mr. McKeon's got an amendment to Mrs. Sullivan's, if I remember correctly.
Mr. Aasheim.

**DELEGATE AASHEIM:** (Inaudible)—error there. His motion was to delete in the first place, so I'm in error.

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE AASHEIM:** So, I'll have to withdraw my motion; it's incorrect. And I would like to say, then, I would recommend that we vote against the McKeon substitution, in favor of the original.

**CHAIRMAN GRAYBILL:** It's actually not Mrs. Sullivan's; it's Mrs. Van Buskirk's; and that's what confused me. The situation is that Mrs. Van Buskirk moved Section 7 on page 29. Mr. McKeon moved to delete it and put his language for Section 7 in place of it. If you want to amend Mr. McKeon's, you can, but I don't think you can amend it by going right back where he started from. So the issue is still on Mr. McKeon's motion. Now, is there anybody who want to talk before Mr. McKeon closes? Mr. McKeon, you may close.

**DELEGATE McKEON:** Thank you, Mr. Chairman. Mr. Chairman, I think the real issue here is whether or not we are going to give the people the right to choose. We have heard some speak in favor of the PUDs; we have heard those who are opposed. I think that it is incumbent upon us just to give the people the right to make their own choice, and with that, I close. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Do you want a roll call vote? Mr. McKeon? Mr. Harper does. All right, we'll have a roll call vote. All in favor of Mr. McKeon's substituted Section 7, vote Aye; and those opposed, vote No. Has every delegate voted?
(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** Very well, take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Absent |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |

| | |
|---|---|
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Absent |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Absent |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. Chairman, 32 delegates have voted Aye, 54 have voted No.

**CHAIRMAN GRAYBILL:** 54 voting No and 32 Aye, the motion is defeated. The issue is now on Mrs. Van Buskirk's Section 7.

Mr. Aasheim.

**DELEGATE AASHEIM:** I move to amend Section 7 by—on line 31—or page 31, line 2, after "subdivision", to add the words "or other political subdivision"—"or other political subdivision", so that the paragraph will read: "Any county or municipal subdivision or other political subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law".

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim, I take it your motion is to add, after the first line, "Any county or municipal subdivision or other political subdivision"—so that it's broader than municipal or county subdivisions, is that right?

**DELEGATE AASHEIM:** That's right.

**CHAIRMAN GRAYBILL:** Very well, Mr. Aasheim's amendment is before the body.

**DELEGATE AASHEIM:** I'm not going to speak very long on this. This is permissive legislation, and there's nothing in here that authorizes a—or dictates to a political subdivision to go ahead. I feel that this is a democracy, and if the people want to try something of this nature, I think that they should have this prerogative. I certainly believe that we should maintain the competitive system in America. I have been a strong supporter of the rural electric co-ops, but I certainly would not want to see the rural electric co-ops have a monopoly in my area, because I think it's to the best interest of all of us that we maintain competition. And I think that if we have a municipality who feels that they can operate their own powerplant or buy electricity from some other source, that they should have this right to do so as any other state in America has that right.

**CHAIRMAN GRAYBILL:** Is there any other discussion? Mr. Aasheim, do you want a roll call?

**DELEGATE AASHEIM:** I would like a roll call.

**CHAIRMAN GRAYBILL:** Very well, all in favor of Mr. Aasheim's amendment, which would add the phrase "or other political subdivision", on line 6, page 29, to Section 7, vote Aye on the voting machines; those that are opposed, vote No on the voting machines. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Close the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Aye |
| Artz | Absent |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Absent |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Absent |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Absent |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Absent |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Aye |
| Payne | Absent |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |

| | |
|---|---|
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. Chairman, 47 delegates have voted Aye, 37 have voted No.

**CHAIRMAN GRAYBILL:** Very well, the amendment prevails and Section 7 now reads: "Any county or municipal subdivision or other political subdivision of the state" et cetera. The issue is on Mrs. Van Buskirk's Section 7.

Mr. McDonough.

**DELEGATE McDONOUGH:** Mr. President [Chairman], I wish to restate my objection to the former one of Mr. McKeon's. This really doesn't mean anything. It's subject to regulations as prescribed by law. The Legislature now has the right to create these districts and give the power to the cities. You adopt this, you clutter up the Constitution. And unless the Legislature wants to make reasonable regulations, it's going to be a dead letter within 2 or 3 years. I resist inserting this into the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman and fellow delegates. I merely want to state some corrections that may have been made here. The statement was made that there was no prime power available for any municipality that wanted to start a municipality now. That is not correct. Over in the Bonneville area, over west of the Continental Divide, there is prime power available for any municipality that wishes to start any municipal operation. I say that not from hearsay, but from fact. I'm a member of the Bonneville Power Advisory Commission, and I've talked directly with the economist in charge of distributing power—or in charge of seeing that power is available for anyone, so those are not true statements. The tax structure has not collapsed in Idaho, Washington, Oregon or all of the other 48 states that have public utility or municipal districts. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mrs. Van Buskirk's proposed Section 7, on page 29. It would set up—it would authorize county and municipal subdivisions or other political subdivisions of the state to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law. I presume a roll call is desired. All in favor, vote Aye; opposed, No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Cast the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Nay |
| Artz | Absent |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Absent |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Nay |

| | |
|---|---|
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Absent |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Absent |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Absent |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. Chairman, 41 delegates have voted Aye, 43 have voted No.

**CHAIRMAN GRAYBILL:** 43 delegates having voted No, 41 delegates having vote Aye, the section fails. The Chair has no other proposals for Section 7 before it. The Chair has no other minority reports before it. Mr. Romney, you have a matter before the Chair that you may want reconsidered. Do you want to reconsider Section 1, on page 16 of the Regulation of Public Utilities Article? If so, say so.

**DELEGATE ROMNEY:** Mr. Chairman, I move to reconsider Section 1. The Chair has the proposal. It has not been printed. It is an effort to compose some of the matters that—Mr. Chairman, I can't seem to find that. Could it be read?

**CHAIRMAN GRAYBILL:** Mr. Romney—if Mr. Romney is allowed to reconsider Section 1, he would put in an amendment that says: "Section 1, Regulatory authority. The Legislature shall provide for a regulatory authority which shall consist of three commissioners who will be elected by the people and whose terms shall be provided by law, but must coincide".

Mr. Romney.

**DELEGATE ROMNEY:** It's a matter to compose the differences between the delegates on this matter. It isn't what I wanted, but it might clear up a difficulty that has recurred over the years. It would—instead of having overlapping terms of whatever the Legislature might fix, it would have a term of whatever years the Legislature might fix and they would be concurrent. That's all I have to say.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Romney's motion to reconsider. Is there discussion?

Mr. Brown.

**DELEGATE BROWN:** I'll be brief, Mr. Chairman, but if you put that in, you forever lock it in, so Mr. Heliker's one-man Commissioner or any other type of plan for fixing utility rates would be out the window. So I oppose the motion.

**CHAIRMAN GRAYBILL:** Mr. Anderson.

**DELEGATE OSCAR ANDERSON:** I oppose this motion also. A few minutes ago we passed a Consumer Counsel law here, and it said by a special tax on a net income or gross revenue of regulated companies. Now, every municipal water plant in the State of Montana is a regulated company. I think that we ought to use more care, or realize exactly what we are doing, when we pass these hurried-up proposals.

**CHAIRMAN GRAYBILL:** Is there other discussion of the motion to reconsider?

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, briefly, we just voted by roll call vote, 58 to 37, to delete Section 1. Then when a substitute came in; we voted 52 to 35 to delete it. It's still legislative, and I oppose the motion to reconsider.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Romney's motion to reconsider Section 1 of the Regulation of Public Utilities Article. Mr. Romney, I hesitate to put this orally unless I know you don't care.

**DELEGATE ROMNEY:** I'll ask for a roll call and seconds.

**CHAIRMAN GRAYBILL:** Very well, all in favor of reconsidering Section 1 of the Regulation of Public Utilities, vote Aye; and all opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate want to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Absent |
| Belcher | Absent |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Absent |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Absent |
| Driscoll | Absent |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Absent |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Nay |

| | |
|---|---|
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Absent |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Nay |
| Robinson | Aye |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Absent |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. Chairman, 15 delegates have voted Aye, 67 have voted No.

**CHAIRMAN GRAYBILL:** 67 delegates having voted No and 15 having voted Aye, the motion to reconsider is killed. The Chair has no other motions before it. Mr. Eskildsen, just a moment.

Mrs. Van Buskirk.

**DELEGATE VAN BUSKIRK:** Before we close, Mr. Chairman, I'd like to say that I pushed the wrong button on R. J. Studer's right-to-work bill.

**CHAIRMAN GRAYBILL:** Very well, the record may so show.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I want you all to note that I haven't had a thing to say all day. I just listened intently and enjoyed every moment of it, clear up till 8:30. (Laughter) At this time, I would like to move that we pass all other business on Order of Business until the next sitting.

**CHAIRMAN GRAYBILL:** Order of Business Number 10. The motion is to pass all other matters on Order of Business Number 10. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I move the Committee of the Whole rise and finally report.

**CHAIRMAN GRAYBILL:** The motion is that the Committee of the Whole rise and finally report, but I'd like you to stay till we do it. All those in favor of rising and finally reporting on the Public Health, Welfare, Labor and Industry committee proposal, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** Very well, if you will stand at ease a moment while we do it.

(Proceedings moved from Committee of the Whole to Convention, President Graybill in Chair)

**PRESIDENT GRAYBILL:** Members of the Committee, the Chair would like to point out to you that we failed to cover Style and Drafting on Bill of Rights. We failed to cover Judiciary, Natural Resources, Revenue and Finance on Order of Business Number 10—reconsideration of the minor matters in them. We'll take those up in the morning and hope to get them covered on Order of Business Number 5 in the morning, so that they can be worked on by the rest of the staff. We are now at least another day behind, so we'll expect to be here bright and early and working hard in the morning. Will the clerk please read the title and the signature of the committee report.

**CLERK SMITH:** "March 15th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 9 of the Committee on Public Health, Welfare, Labor and Industry Committee, recommend as follows: that the committee rise and finally report. Signed: Graybill, Chairman."

**PRESIDENT GRAYBILL:** Now, is there anyone that would like the report read in full?

**DELEGATES:** No.

**DELEGATE ESKILDSEN:** Mr. President.

**PRESIDENT GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move the adoption of the Committee of the Whole report and that Public Health, Welfare, Labor and Industry proposal be referred to the Committee on Style and Drafting.

**PRESIDENT GRAYBILL:** The motion is to adopt the committee report and refer the Public Health report to Style and Drafting. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So ordered. Mr. Eskildsen—just a moment.

**DELEGATE ESKILDSEN:** Mr. President.

**PRESIDENT GRAYBILL:** Just a moment.

Mr. Schiltz.

**DELEGATE SCHILTZ:** For those of the hard-working Style and Drafting Committee who are still here, and most of them are, we will not meet in the morning.

**PRESIDENT GRAYBILL:** But you'll meet all night, so relax. (Laughter)

Mrs. Bates, for what purpose do you arise?

**DELEGATE BATES:** I just wanted to be off the record. I wanted to thank the group, whoever is responsible, for the collection for Grace Bates' ticket to Australia, leaving immediately. And if you really want me to go, you're going to have to do a lot more, boys. Thank you.

**UNIDENTIFIED DELEGATE:** You're welcome, Grace! (Laughter)

**PRESIDENT GRAYBILL:** Here, Grace—All right, the motion is to adjourn—have you made the motion? All right, make the motion, please, Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move we adjourn until Thursday, March 16th, 9:00 a.m., 1972.

**PRESIDENT GRAYBILL:** The motion is to adjourn until 9:00 a.m., tomorrow morning. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** And so ordered.

(Convention adjourned at 8:40 p.m.)

**March 16, 1972**
**9:10 a.m.**

## Forty-Seventh Day

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** The Convention will come to order. Reverend Harper has asked Reverend Martin Bauman of the First Lutheran Church of Helena, Montana, to say our invocation for us this morning. Will you all please rise.

**REVEREND BAUMAN:** Help us, Almighty God, at all times to do the things we ought to do. To that end, give us clear sight that we may know what to do, courage to embark upon it, skill to find a way through all its problems, perseverence to bring it to its appointed end, strength to resist all the temptations which would seek to lure us aside. So help us to begin, to continue, and to end all things in You, our God and Father. May the peace of God which passes all understanding keep our hearts and minds in the knowledge and love of God and of his Son, Jesus Christ, our Lord, and the blessing of Almighty God, the Father, the Son and the Holy Spirit be among us and remain with us always. Amen.

**PRESIDENT GRAYBILL:** Well, the Chair wants to express its thanks to all of you for working so hard and late last night. And I'm glad to see you all up this morning in such good shape. We'll take attendance, to see who isn't here, by voting Aye on the voting machines.

**CLERK HANSON:** Mr. President, may Delegates Bates, Conover and Warden be excused, please?

**PRESIDENT GRAYBILL:** They may. Someone put up some extra money and Grace left last night. (Laughter)

**CLERK HANSON:** Delegate Heliker.

**PRESIDENT GRAYBILL:** Very well. Take the attendance.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Excused |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Excused |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Absent |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |

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|---|---|
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Excused |
| Wilson | Present |
| Woodmansey | Present |

**CLERK HANSON:** Mr. President, 96 delegates present, 3 excused, 1 absent. Mr. Heliker has just walked in.

**PRESIDENT GRAYBILL:** The journal may show your presence, Mr. Heliker.

**CLERK HANSON:** 97 delegates present.

**PRESIDENT GRAYBILL:** Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees.

**CLERK HANSON:** "Mr. President. We, the Committee on Style, Drafting, Transition and Submission, transmits the Judiciary and Revenue and Finance Articles for further consideration to Order of Business Number 10. Signed: Schiltz, Chairman." "We, the Committee on Style and Drafting, Transition and Submission, transmits the Natural Resources Article to Order of Business Number 5 for final consideration. Signed: Schiltz, Chairman."

**PRESIDENT GRAYBILL:** Very well. Natural—let's see—Judiciary and Revenue and Finance to go to 10; Natural Resources is assigned to 5. So that we'll all understand what we're doing here, on Judiciary and Revenue and Finance, the Style and Drafting Committee asked to have them back. On one of them we found an extra half section, and on the other one they wanted to look at it. We will, in a few minutes here, proceed to Order of Business Number 10 and clean up those two on Order of Business Number 10 and refer them back to 5. And then, we hope to cover first this morning, or maybe I should say second, Judiciary, Natural Resources, and Revenue and Finance on Order of Business Number 5, Final Adoption, this morning. Mr. Clerk, how about the other?

**CLERK HANSON:** "Montana Constitutional Convention, 1971-1972. Committee on Style and Drafting, Transition and Submission Proposal Number 13, reported March 16, 1972. The Committee on Style, Drafting, Transition and Submission submits a unanimous proposal entitled 'Compact with United States'. Signed: John M. Schiltz, Chairman." Mr. Chairman.

**PRESIDENT GRAYBILL:** This has been placed on your desks this morning. This is Style and Drafting's report on the ordinances. It'll be placed on Order of Business Number 10, to remain there for 48 hours. Very well. Order of Business Number 2, Reports of Select Committees.

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Order of Business Number 3, Communications.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 4, Introduction and Reference of Delegate Proposals.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 5. Without objection, we'll pass Order of Business Number 5 until we have cleaned up the Judiciary and Revenue and Finance Articles on 10 in a few moments. Is there objection? Very well. We'll pass Order of Business Number 5. Order of Business Number 6, Adoption.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 7, Motions and Resolutions. We have two resolutions this morning.

Mr. Murray, do you want the Chair to read 13?

**DELEGATE MURRAY:** Yes, Mr. President.

**PRESIDENT GRAYBILL:** Will the clerk please read Resolution Number 13.

**CLERK HANSON:** "Montana Constitutional Convention, 1971-72. Resolution Number 13, introduced March 15th, 1972. Be it resolved by the Constitutional Convention of the State of Montana that a select committee composed of delegates hereinafter named be appointed by the President for the purpose of preparing for and arranging of appropriate final ceremonies to be held upon the conclusion of this Convention. Delegates to serve are J.C. Garlington, Chairman; Paul K. Harlow, Clark E. Simon, Lucile Speer, Veronica Sullivan. Introduced by Committee on Rules and Resolutions, Marshall Murray, Chairman."

**DELEGATE MURRAY:** Mr. President. I'm sure that all the delegates have reviewed the memorandum of March 13, 1972, to them from you. It was placed on the desks a day or two ago. There have been newspaper stories as the result of the public hearing which the Rules and Resolutions Committee held on this matter. We have, this morning, Resolutions 13 and 14 from the Rules Committee, and they were recommended unanimously by the committees. In accordance with your memorandum, this particular resolution—Resolution Number 13—is simply for the purpose of appointing, through you, a select committee to prepare for and arrange appropriate final ceremonies to be held upon the conclusion of this Convention, which it would appear now to be sometime between Wednesday and Friday, depending upon who you talk to and whether or not it's Mr. Schiltz or the President. But sometime next week, and hopefully not later than Friday, we anticipate a motion adjournment sine die. We would like to have some type of an appropriate ceremony, and the resolution is simply for that purpose. I believe it needs no further explanation, and I would move at this time that Resolution Number 13 be adopted.

**PRESIDENT GRAYBILL:** Is there discussion of Resolution Number 13? Very well. All in favor of Resolution Number 13, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So ordered. Resolution Number 13 is adopted. Will the clerk please read Resolution Number 14.

**CLERK HANSON:** "Montana Constitutional Convention, 1971-1972. Resolution Number 14, introduced March 15th, 1972. Whereas the Montana Constitutional Convention has nearly completed its substantive activities and is making arrangements for adjournment sine die in order to meet its election date commitment of June 6, 1972; and whereas prior to adjournment sine die the Convention will be able to complete its procedural, administrative and voter education affairs, all of which must be concluded in orderly and reasonable manner; and whereas the Convention anticipates that it will need to establish an appropriate committee to manage and conclude all of its procedural, administrative and voter education affairs after adjournment sine die. Now, therefore, it is resolved by the Constitutional Convention of the State of Montana as follows: One, the Convention hereby creates a committee to act with the President of the Convention on its behalf after adjournment sine die, delegating to it full authority to manage and conclude all the Convention's procedural, administrative and voter education affairs and to spend the Convention's funds therefor, but only within the limits of its appropriation and such funds as the Convention may have. Number two, the Convention hereby appoints to said committee the President, Leo Graybill, Jr., who shall act as its Chairman, and the following delegates: John Toole, Dorothy Eck, Bruce Brown, Jean Bowman, Margaret Warden, Fred Martin, Robert Vermillion, Katie Payne, Betty Babcock, Marshall Murray, Catherine Pemberton, John Schiltz, Tom Joyce, George Harper, Bill Burkhardt, Jerome Loendorf, Oscar Anderson and Gene Harbaugh. Number three, no delegate may serve on the committee who speak—shall seek public office in the primary election to be held on June 6th, 1972. The President, as Chairman of the committee, shall have authority to substitute other Convention delegates for any committee member named herein who may decide to seek public office. Number four, the Convention hereby delegates the authority to the committee to receive, disburse, and account for all federal funds which the Convention may receive. Number five, the Convention also delegates authority to the committee to supervise and edit any and all voter education material prepared on behalf of the Convention or by other persons related—relative to the work of the Convention. Number six, the committee shall terminate its work at such time as all the Convention procedural, administrative and educational affairs have been completed and all requirements of the Enabling Act have been met. Introduced by Committee on Rules and Resolutions, Marshall Murray, Chairman."

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move the adoption of Resolution Number 14. Mr. President.

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** By way of explanation, let me say that this is again the result of your memorandum of March 13th, 1972, to all of the delegates. This matter was referred to the Rules Committee. A public hearing was held. Those interested in the matter did appear, and we did discuss this situation in detail. It does—and the Rules Committee unanimously recommended that this resolution be adopted. It appears quite clearly at this stage of the Convention that we will not be able to complete all of our procedural and administrative affairs, although we will have, at the time of adjournment sine die, completed the Constitution. Because of these details, it appears necessary to establish some—an appropriate committee, as we call it in the resolution—whatever title we decide we should give to it—to handle these matters after the adjournment. Now, let me explain, with respect to the voter information pamphlet, a problem that we have. At 10 o'clock this morning, we will be receiving bids for the printing of this particular document. At this state of the Convention, we do not have all of the work connected with that document completed. It is anticipated we may not have all of the arrangements with respect to that document completed by adjournment sine die. We have the report from the Convention to the people; we have the explanation of the various sections; and these particular matters concern us as to whether or not we will be able to achieve their completion by the date of adjournment. And we have certain other matters relative to the election itself, which we have decided should be on June 6, 1972, which somebody has to oversee, from this Convention. We think that the matter should be handled by a committee delegated the appropriate power to do so. We also know that we will be the recipient of approximately $30,000 in federal funds which we have not received. If we do not receive and disburse these funds and account for them prior to adjournment sine die, it is doubtful that the federal authorities would give us the money unless we have created a body that could handle this and which would have delegated by this Convention the authority to receive and disburse it and account for it. And that's another reason we think we need it. We also know that in the handling of whatever voter educational affairs that this Convention might undertake, that we will not be able to get to those until after adjournment sine die. We know that there is great interest amongst the delegates to have this work done in an informational and educational manner only, and not for the purpose of selling it nor to put anything out to the public which might be slanted in any way, but hopefully for the purpose merely of explanation. We want to make sure that we have somebody charged with the authority to edit and handle these matters so that that educational program will be conducted in the fair, impartial manner that this body has indicated it would like to have it handled. We feel that this committee is composed of delegates who have the best interests of this Convention at heart and would do this job. Now, let me say that, first of all, as you read down the list of names, you will see that all of the elected officers are listed—all of the elected officers. We have then named four delegates from Helena, because we feel that they will be here—most available to the President and to the Vice-president, both of whom will be working two or three days a week until the election, without expenses or charge to us. And we feel that they need a nucleus of this particular committee to work with from day to day; the Helena people will be available for that purpose. Then there are others who have been either connected with the Public Information Committee, who are skilled with the media—Margaret Warden, of course, who is the Chairman of that committee; Fred Martin, from a newspaper standpoint; Robert Vermillion from the other media, particularly radio; and a few of us who are concerned about making sure that this be handled in a proper matter. And we feel that the committee is representative of the political makeup of this Convention; that it is neither liberal nor conservative if you cross party lines in that fashion; and that it certainly should not be made up of anybody who is willing to—or at this time or may prior to the time of this election or prior to April 17th—I think is the date—intend to file for public office in this state, because we do not think it would be in the best interests of the Convention for somebody to be serving on an interim committee, an ad hoc committee such as this might be, with this authority and also attempt to further their own personal political interests. And so, paragraph 3 provides the necessary power in the President to substitute some other Convention delegate for anybody who may choose—who is named on this committee who may choose to seek public office after their appointment to the committee. Now we—with reference to paragraph 4, we specifically delegate authority to the committee to receive, disburse and account for federal funds, because we think that if we do not mention this specifically, we may have a problem in the receipt of those funds. We do not desire to have any problem in that respect. Now, the last part is, the Convention also delegates authority to the committee to supervise and edit any and all voter educational materials prepared on behalf of the Convention. I'm talking about those materials which will not be prepared and which you will not have seen prior to adjournment sine die. And for the reasons that I have previously stated, I think this committee will have the interest of this Convention at heart, and also the interest of the citizens of the State of Montana, so that this work will be done in an informational and educational manner and will not be of a selling-type proposition. Also, we think in paragraph 6 we should provide for the termination of this committee, but not at such time until the requirements of the Enabling Act have been met. Now, the Enabling Act requires us to do some things with certain documents—the journal, the verbatim transcripts of this Convention—and somebody should be authorized to make sure that these matters are concluded in reasonable fashion. Now, all of this, in addition to what I have said, requires the retention of some staff. And we will—we anticipate that we will need one stenographer—this is after Style has completed its work if they haven't completed all of it—but we will need one stenographer. We probably will need one or two other people who will be helping us in various manners, and at such time, of course, as their work is completed they would be terminated. With respect to the federal funds, we know that we will need some type of coordinator and bookkeeper for that purpose, and we anticipate that we will have to keep somebody working on the payroll until that job is completed. Now, of course, when you have staff you have to pay their bills, and that's another thing that the committee would undertake. And I think, as briefly as I can, that does explain the reason for the appointment of a committee. The Rules Committee did not believe that the President should appoint this particular committee as we sort of authorized in Resolution Number 13, but that it should be a Convention committee. And I'm available to answer any questions at this time. Thank you, Mr. President.

**PRESIDENT GRAYBILL:** Before the questions, may the President address himself simply to Number 3 for a moment? The list of people that I suggested there, Mr. Murray has explained. But I would like to make it clear that I don't mean to leave anybody out, but we can't all be on the committee unless we all want to stay. And there will be many opportunities for the rest of us to still serve in the educational capacity, particularly if the plans for the television panels go on. We'll certainly use as many of you as we can there, and there will be plenty of other opportunities for you to work in your committee. And we certainly expect and need all of you to help as you can, and I don't want anyone to feel left out. We did put all the officers, we put all the active committee heads of the Public Information Committee, we put, as he said, several from Helena here so there'd be a nucleus, and then we balanced it out with a few people from corners of the state which were not otherwise very well covered. But I certainly don't want anyone to be offended by the fact that they got left off the committee. The only other point I'd like to make is that—and Mr. Murray explained—that the HUD people and the planning board do insist we have somebody to give this money to. The problem is there isn't any possibility of getting the money now. The money—the federal funds—can't be pipelined in time to get here before we adjourn, so we have to have the committee that has a kind of a continuing existence so that when the funds get here, they can be disbursed. Now let's discuss it.

Mr. Mahoney, I saw you up.

**DELEGATE MAHONEY:** Mr. Chairman [President]. In line 27 in Section 1, would—could somebody answer what you mean by "limits of its appropriations and such other funds as the Convention may have".

**PRESIDENT GRAYBILL:** Do you want me to do that, Mr. Murray, or you?

**DELEGATE MURRAY:** No, go ahead.

**PRESIDENT GRAYBILL:** We do—the appropriation is 499 plus a thousand dollars. We do have other funds. We have made about $3,000 selling reports and selling things through the concession out here, and that means that that money could be spent. And third, it applies to the federal funds. In other words, "such other funds" would include the federal funds if we got them. So the total sources of funds that we have are the $499,000 appropriation, the potential 30,000 in federal funds, and something in the nature of $3,000 that we've made—earned during the Convention for selling the total packets—we made about 3,000 selling the total Convention reports like the Legislature does—and then we've made about four or five hundred dollars selling, at a quarter a page and 10 cents a sheet, on the mimeograph. So that just is a line to include the rest of those funds. Charley.

**DELEGATE MAHONEY:** All I'd like to do is I don't want any donations coming in from the outside into this. I think this—if we're going to have this Convention, I don't want to see pressure groups—and if they want, let them have it. I don't want it mixed with this. This is all I'm trying to do is to get it in the record.

**PRESIDENT GRAYBILL:** Right. Anything of that nature, you certainly would be advised of. And you do know, of course—it's been in all the literature—that we have the—Bozeman has a grant and is putting out this one tabloid with the grant money that the University has. Other than that, everything's been explained before. And there are no—nobody's come forward with any other money, and if they did, we certainly would have the committee advise this body. We don't want this body accepting money from people that they don't know about.

**DELEGATE MAHONEY:** Well, Mr. Chairman [President], the only thing I have—and this became a new radical procedure 2 years ago, or at the time of the adoption of this Constitutional Convention and the 20 boards. This is the first time in the history of the State of Montana that we had ever taken public funds to sell something. And I still question that. Now, if this here Convention goes out—and I'm sure you're going to present this in a fair and honest, logical way—but I always think that maybe his majesty's loyal opposition maybe should be taken into consideration at the time of the selling of things; that maybe there is another side, than maybe this Convention's side, or—and that—this is what's bothering me, is this new procedure that we have now developed in the last 3 years to come out here and now taking state funds. And this acts to me that we're taking funds to sell something to the public, and I wonder at times. Now, I have no objection to this. I think it's been fine. I certainly have no objection to the committee and that, but I just want to get this in the record that I'm not too strong to take public funds—I don't care whether federal or state or where they came from—to sell something to the people when maybe—

**PRESIDENT GRAYBILL:** Mr. Mahoney. The Chair would like to point out that I purposely put the author of the motion, Mr. Schiltz, on this committee, and I expect to have lots of trouble.

Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman [President]. I just want to suggest that the committee, when they put out the printing for bids, I think they should be very careful of the bidders, just to make sure they don't have a conflict of interest. (Laughter)

**PRESIDENT GRAYBILL:** Well, we've already scratched Romney's and Martin's bids.

Mr. Furlong.

**DELEGATE FURLONG:** Mr. President. Would you or Mr. Murray explain the last sentence—or last portion of the sentence of paragraph 5 on lines 17 and 18, "or by other persons relative to the work of the Convention". This has to do with the editing and supervision.

**PRESIDENT GRAYBILL:** Right. There's a—right now, for example, we have some staff members working on material that will go in—that will be part of the public information of the Convention. For example, Mrs. Dowling is now working on the explanation for the voter information pamphlet of each section. And this means that someone on behalf of the committee will edit that. So in other words, we have staff people that are doing that. Secondly, it is very likely that in order to put this thing together, we're going to need agency help in terms of getting time and—media time and media layout ready. If we do any media layout, for example for an advertisement, the point is that it would have to be proofed by this committee or some subcommittee of the committee before it could be put out. It cannot be put out by an agency or an artist without our having approved it.

**DELEGATE MURRAY:** Mr. President.

**PRESIDENT GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** May I further explain, too, that there may be people who want to do some work with respect to what we have done here by way of information, that would come to some of us and would say, "Is this done fairly, or is it done accurately"? And this committee, I think, should have the authority to judge that matter and to edit it and to make sure that it is. Now, I think of—one thing in this respect particularly is the Montana State University project and the tabloid that they're going to put out. Now, if we should, in any way supplement this, then I think we should have the right to edit it, and this gives the authority to the committee for that purpose.

**PRESIDENT GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** This isn't particularly a concern, but I can foresee that it could conceivably happen. While this committee is working—and I think it's a great idea—I presume in all of the areas of the state there will be other kinds of information in which delegates will be invited to participate, in radio, TV, et cetera, and my only concern was here that you may find a conflict of opinion between individual delegates on some of these programs as compared to the activity of this committee. And I wanted to be sure that this is in the record and that there were no possible conflict here; that, conceivably, you will find some conflict between now and the time the thing is ratified or killed.

**PRESIDENT GRAYBILL:** Mr. Furlong, your discussion raises a horrible thought in the President's mind. We certainly don't intend to tell any of you what to say when you get back home. Perish the thought! Is there other discussion of the resolution?

Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman [President]. You are aware, of course, that I had a resolution that I was trying to present. And I wondered if this wouldn't—

**PRESIDENT GRAYBILL:** It's coming up next, and it will be referred. And of course, it may override all of this; I'm not saying it wouldn't. But it's the next item on the business, Mr. Johnson.

**DELEGATE JOHNSON:** Thank you.

**PRESIDENT GRAYBILL:** Very well. All in favor of this resolution, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** All right, this resolution is adopted. Will the clerk read Mr. Johnson's resolution.

**CLERK HANSON:** "Montana Constitutional Convention, 1971-1972, Delegate Resolution Number 15, introduced March 15th, 1972. The resolution of the Constitutional Convention of the State of Montana for the members to recess for the purpose of evaluating the entire document."

**PRESIDENT GRAYBILL:** They haven't been read in their entirety, but I think it ought to be read in its entirety. Yeah, please read it.

**CLERK HANSON:** "Whereas this Constitutional Convention has cost the State of Montana $700,000 in money and has cost its delegates about 8 months of their lives devoted to study and research in the field of constitutional government; and whereas we certainly do not want to waste the effort, money or time involved. Therefore, I move this Convention consider the following: The Montana Constitutional Convention shall, after completing debate on the proposed new Constitution, recess for 5 months to August 15th, 1972, and then convene and reconsider our new proposed Constitution in its entirety. After this interim, used for knowledgeable consideration and observation, we will complete a superior document more worthy of this dedicated group of delegates and more worthy of Montana. Introduced by Torrey B. Johnson." Mr. President.

**PRESIDENT GRAYBILL:** Very well. You've heard Mr. Johnson's resolution. Mr. Johnson's resolution, under the rules—Mr. Johnson, I'm going to refer that to the Rules Committee, under the rules, and the Rules Committee should hold a hearing or a meeting on it. And I hope that you can announce before we adjourn today when your meeting will be, and we'll bring it back as fast as we can. Can you tell us now?

**DELEGATE MURRAY:** Mr. President. The Rules Committee will meet on that resolution at 8:15 tomorrow morning.

**PRESIDENT GRAYBILL:** 8:15 tomorrow morning. So, anybody that has any viewpoint on that or wants to discuss that with the Rules Committee, see them at 8:15 tomorrow morning.

And thereafter, the Rules Committee will bring Mr. Johnson's resolution back to this body for discussion. Is that satisfactory, Mr. Johnson?

**DELEGATE JOHNSON:** Yes.

**PRESIDENT GRAYBILL:** Very well. All right, are there other rules or resolutions?

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Order of Business Number 8, Unfinished Business.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 9, Special Orders of the Day.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 10, General Orders of the Day.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders, Mr. President.

**PRESIDENT GRAYBILL:** The motion is to resolve this Convention into Committee of the Whole.
Mrs. Pemberton, for what purpose do you rise?

**DELEGATE PEMBERTON:** Mr. President. I didn't know where this came in the order of business. Mrs. Warden left a memorandum with me last night concerning the pictures of the Convention. It is still possible to order a few more. I have the blanks here on my desk, but they must go in almost immediately to Miss Harrison's office. Thank you.

**PRESIDENT GRAYBILL:** Mr. Eskildsen. The Chair suddenly remembers something else we didn't do. I wonder if we might revert to Order of Business Number 3, without objection, Communications. It has been our practice to put a note in the journal about our distinguished speaker series. And I would like the journal to show that on Tuesday night, this Convention had as the final speaker on its distinguished speaker series, Miss Jeannette Rankin, who addressed delegates here in Convention Hall, answered questions, and provided the delegates with an entertaining evening. I'd like that note to show in the journal, and I'm sorry I missed it yesterday. Does everyone understand Mrs. Pemberton's announcement? Other pictures are available. See her if you haven't taken care of your pictures. Mrs. Pemberton, did that mean other pictures or the same pictures?

**DELEGATE PEMBERTON:** Mr. President. These are the same pictures of the committees and the Convention. And they have—they will take orders now. You also have to put 50 cents additional charges with them for mailing, because the shop can't get them out in time before the Convention. Thank you.

**PRESIDENT GRAYBILL:** Very well. It's the same pictures, but if you missed the deadline, here's your chance again. All right. Now may we be back on Order of Business Number 10, without objection.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** The motion is to resolve ourselves into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.
(No response)

**PRESIDENT GRAYBILL:** So ordered.

(Committee of the Whole, Delegate Graybill, Chairman)

**CHAIRMAN GRAYBILL:** The business before us on Committee of the Whole this morning is, first, consideration of the Judiciary Article. Mr. Schiltz, do you want to explain what part of the Judiciary Article, Order of Business Number 5?

**DELEGATE SCHILTZ:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Before you do that, let's point out to everybody that we're talking about the white paper with no cover, styled Order of Business Number 5, and then Final Consideration, Style and Drafting Judiciary Number 5. And you will need, shortly, the one on Revenue and Finance and, shortly, the one on Natural Resources, so you might start looking.
Now, Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. We're concerned, on the Judiciary, only with Section 14, which you will recall was added in the Committee of the Whole debate the other day. And that necessitated that Section 14 go to Style and Drafting for style and drafting. It's on the back of the papers you have.

**CHAIRMAN GRAYBILL:** Page 6.

**DELEGATE SCHILTZ:** Right. Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 14, Order of Business Number 5, of Style and Drafting Judiciary Article, it recommend the same be adopted.

Mr. Chairman. We just made this conform to the other language in the article and in other articles, changed "Legislative Assembly" to "Legislature", and made "Chief Justices" and "Justices" to conform with Section 3.

**CHAIRMAN GRAYBILL:** Is there any discussion of the Style and Drafting changes on Section 14? Very well. All in favor—

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President [Chairman]. I would like Mr. Schiltz to explain for the record the meaning of the last sentence of Section 14 where he—where it's stated that no candidates shall extend [expend] money in a campaign in excess of the amount appropriated and authorized by the Legislature. Would that mean that no money can be spent in either the general or the primary campaign unless it's authorized by the Legislature, or does that refer only to the general campaign?

**DELEGATE SCHILTZ:** Well, so far as I'm concerned, Mr. Habedank, it means only for the general election campaign which is referred to above.

**CHAIRMAN GRAYBILL:** Very well.

Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman. I've talked to a number of Legislators about this in the last few days. They seem to be of the unanimous opinion they will appropriate $1. I don't want to bring this whole thing up again, but what happens then?

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I think we're—

**CHAIRMAN GRAYBILL:** Right. I think that's out of order. It's not style and drafting. Are there other questions about the style or drafting?

Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. Would Mr. Schiltz yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** (Inaudible)

**DELEGATE NUTTING:** Did you place the word "acting" in? It's underlined.

**DELEGATE SCHILTZ:** Oh, yes, that's put in. That's new material, right.

**DELEGATE NUTTING:** Would he yield to another question?

**DELEGATE SCHILTZ:** Yes.

**DELEGATE NUTTING:** Would that—the way it's worded, would that be—say if I do it on behalf of myself, would I—could I then contribute? I'm not acting on his behalf.

**DELEGATE SCHILTZ:** Well, I—not so far as I'm concerned. I wouldn't think that's—

**DELEGATE NUTTING:** You wouldn't interpret it that way?

**DELEGATE SCHILTZ:** No.

**DELEGATE NUTTING:** Okay.

**CHAIRMAN GRAYBILL:** Very well. Is there any other consideration or discussion of Section 14, Style and Drafting? Very well. All in favor of Section 14 as reported by Style and Drafting, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Mr. Schiltz, do you want to move the Judiciary Article to Order of Business Number 5?

**DELEGATE SCHILTZ:** Yes. I move that the Judiciary Article go to Order of Business Number 5.

**CHAIRMAN GRAYBILL:** Very well. You have before you for your consideration the Judi-